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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ATLANTIC COUNTY  
Docket No. ATL-L-2648-15

IN RE: TALC-BASED POWDER : CIVIL ACTION  
PRODUCTS LITIGATION : CASE NO. 300

- - -  
TRANSCRIPT OF PLENARY HEARING  
(VOLUME II)  
- - -

PLACE: ATLANTIC COUNTY CIVIL COURTHOUSE  
1201 BACHARACH BOULEVARD  
ATLANTIC CITY, NEW JERSEY  
DATE: APRIL 10, 2024  
BEFORE: THE HONORABLE JOHN C. PORTO, P.J.Cv.  
THE HONORABLE RUKHSANAH L. SINGH  
U.S. DISTRICT COURT MAGISTRATE

- - -  
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EXAMINATION  
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WITNESS: JAMES F. CONLAN

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WITNESS: ANDREW BIRCHFIELD

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1 (Hearing commenced at 9:37 a.m.)

2 THE COURT: Thank you. Good morning.  
3 Please be seated. We have our LiveStream, and we'll  
4 continue with our LiveStream.

5 This is a continuation of the Johnson  
6 & Johnson Talcum Powder Product Litigation, Master  
7 Docket ATL-L-2648-15, Case Number 15. This is a  
8 continuation of our motions.

9 Can we have the appearance of counsel  
10 for Beasley Allen.

11 MR. POLLOCK: Good morning, Your  
12 Honor -- Honors, I apologize. Jeff Pollock and Mike  
13 Sabo, my colleague, and my witness, or my client,  
14 Andy Birchfield is here on behalf of Beasley Allen.

15 THE COURT: Thank you. Good morning.  
16 Counsel for Johnson & Johnson.

17 MR. BRODY: Good morning, Your  
18 Honors. Steve Brody from O'Melveny & Myers for  
19 Johnson & Johnson and LLT Management.

20 THE COURT: Thank you.

21 MR. HAAS: Good morning, Your Honors.  
22 Erik Haas from Johnson & Johnson.

23 THE COURT: Good morning.

24 I have dispensed with "plaintiff" and  
25 "defendant" in this circumstance.

1 MR. POLLOCK: Thank you.

2 THE COURT: All right. So we had  
3 Mr. Haas and Mr. Murdica testify previous. Do we  
4 have another witness on behalf of Johnson & Johnson?

5 MR. BRODY: So, Your Honor, at this  
6 point, you know, we believe we have met the burden  
7 through the testimony of Mr. Haas and Mr. Murdica to  
8 show that disqualification is warranted under the  
9 New Jersey Rules of Professional Conduct, including  
10 Rules 1.6, 1.9 and 1.10, 5.3, 8.3, and 8.4.

11 But I know that Your Honor indicated  
12 in your order that you issued on January 30th that  
13 you felt it was important to hear from both  
14 Mr. Conlan and Mr. Birchfield, and because they are  
15 both here, we are willing to call them to give each  
16 side the opportunity to ask them questions and to  
17 allow the Court to have the record that Your Honor  
18 indicated you felt you needed to have in order to  
19 decide the motion.

20 THE COURT: Thank you.

21 MR. BRODY: So, for that reason, we  
22 will call Mr. Conlan first.

23 THE COURT: All right.

24 Mr. Conlan?

25 MR. POLLOCK: Can we address, with

1 the Court's permission, one technical issue, which  
2 is we had a couple documents. We had the -- Judge  
3 Singh had issued an order regarding the mediators  
4 issuing written questions to interrogatories, or  
5 whatever you want to call it. And we also had, I  
6 believe, a submission on the KCIC privileged  
7 documents.

8 Do we want to simply mark those all  
9 for identification, or how would Your Honors like to  
10 proceed?

11 THE COURT: Judge Singh?

12 JUDGE SINGH: We can mark them.

13 THE COURT: We can mark them for  
14 identification purposes.

15 MR. POLLOCK: I'll just -- Mr. Brody?

16 MR. BRODY: D-3.

17 - - -

18 (Exhibit D-3, marked for  
19 identification.)

20 - - -

21 MR. BRODY: Thank you.

22 I'm ready for Mr. Conlan.

23 THE COURT: Okay. Mr. Conlan, please  
24 come forward.

25 Mr. Conlan, good morning. Before you

1 are seated, please raise your right hand, state your  
2 name, and spell your last name.

3 THE WITNESS: James F. Conlan,  
4 C-O-N-L-A-N.

5 - - -

6 JAMES F. CONLAN, having been duly  
7 sworn, was examined and testified as follows:

8 THE COURT: Thank you. You may be  
9 seated.

10 - - -

11 DIRECT EXAMINATION

12 - - -

13 BY MR. BRODY:

14 Q. Good morning, Mr. Conlan.

15 A. Good morning.

16 Q. I see you have a binder with you up  
17 there. Is that the binder with hearing exhibits?

18 A. Yes.

19 Q. You represented Johnson & Johnson in  
20 its talc litigation when you were a partner at the  
21 Faegre Drinker law firm, correct?

22 A. Yes, bankruptcy related.

23 Q. From July 2020 until early 2022,  
24 correct?

25 A. Correct.

1 Q. And at the time you started  
2 representing Johnson & Johnson in the talc  
3 litigation, the cases pending here in Atlantic City  
4 and in the MDL in Trenton were active, correct?

5 A. Yes.

6 Q. That was about -- you started about,  
7 I guess, a year and a half, not quite a year and a  
8 half, before the LTL bankruptcy filing, right?

9 A. Correct.

10 Q. All right. And I assume you agree,  
11 because Mr. Pollock and counsel for Beasley Allen  
12 has stated it, that you had privileged and  
13 confidential discussions with Johnson & Johnson when  
14 you were representing the company as outside  
15 counsel, correct?

16 MR. POLLOCK: Your Honor, objection;  
17 leading. He's a nonparty.

18 THE COURT: You can rephrase.  
19 Objection sustained.

20 MR. BRODY: Your Honor, respectfully,  
21 he is clearly adverse to Johnson & Johnson.

22 THE COURT: Well, he has not  
23 demonstrated that, Mr. Brody, so I will provide you  
24 with that opportunity. If the need arises, the  
25 Court will not foreclose you from asking leading



1 questions.

2 MR. BRODY: Fair enough. I think we  
3 can get there, Your Honor.

4 BY MR. BRODY:

5 Q. So, Mr. Conlan, I take it that -- let  
6 me just ask you. Do you -- do you disagree with  
7 Mr. Pollock's statement, and I'm going to read it to  
8 you, from a January 17th, 2024 hearing in this  
9 courtroom: "Did he have confidential discussions  
10 with J&J? The record appears crystal clear that he  
11 did."

12 You would agree with that, right?

13 A. Yes.

14 Q. All right. And I take it you  
15 communicated regularly with J&J's inhouse counsel,  
16 correct, while you were representing the company?

17 A. I don't know what "regularly" means.  
18 I can go through -- yeah, frequently.

19 Q. All right. Frequently. Including  
20 Mr. Haas, who is the worldwide head of litigation at  
21 Johnson & Johnson, right?

22 A. I did communicate with Mr. Haas.

23 Q. With Joe Braunruether, who previously  
24 led litigation worldwide for Johnson & Johnson?

25 A. I did communicate with

1 Mr. Braunruether.

2 Q. With John Kim, who was the product  
3 liability lead during the time that you were  
4 representing the company as outside counsel?

5 A. I did communicate with Mr. Kim.

6 Q. With Andrew White, who has  
7 responsibilities for managing the talc litigation,  
8 correct?

9 A. I did communicate with Mr. White.

10 Q. As well as other outside counsel for  
11 Johnson & Johnson, including Mr. Murdica?

12 A. I did.

13 Q. Attorneys at Weil Gotshal, including  
14 Diane Sullivan and Ronit Berkovich?

15 A. I did.

16 Q. Attorneys at Orrick, including James  
17 Stengel?

18 A. I did.

19 Q. You billed Johnson & Johnson for your  
20 time, correct?

21 A. I did.

22 Q. And when you did work for Johnson &  
23 Johnson, did you record your time accurately?

24 A. I believe so.

25 Q. I assume you accurately describe the

1 work that you did for the company?

2 A. I believe so.

3 Q. And I take it that you accurately  
4 recorded the amount of time that you spent billing  
5 them -- doing work with the company; fair?

6 A. I believe so.

7 Q. And you then provided your time  
8 entries to the Faegre Drinker law firm so that  
9 Faegre Drinker could bill Johnson & Johnson for the  
10 time you spent on the talc matter, right?

11 A. I believe so.

12 Q. All right. Fair to say you billed  
13 more time to Johnson & Johnson for the talc matter  
14 than you billed to any other client during the time  
15 you were a partner at Faegre Drinker?

16 A. Than any other one client, that would  
17 be true.

18 Q. All right. So, we know you  
19 represented Johnson & Johnson in the talc litigation  
20 for a period of 20, 21 months, while you were at  
21 Faegre Drinker. We know that you communicated  
22 regularly -- frequently, to use your word -- with  
23 Mr. Haas, Mr. White, Mr. Braunruether, Mr. Kim, and  
24 the other outside counsel.

25 I'm going to ask you some questions

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1 about what you were doing while you were outside  
2 counsel for Johnson & Johnson, but I do want to  
3 caution you, I'm going to be asking you questions  
4 about whether you looked at, whether you evaluated  
5 certain issues. I'm not going to ask you to reveal  
6 the substance of any recommendation that you made,  
7 of any analysis you received, because those are  
8 privileged.

9 You understand that, right?

10 A. I do.

11 Q. And you understand that that's the  
12 company's privilege, correct?

13 A. I understand.

14 Q. All right. And so, if I ask you --  
15 and just so we're on the same page, I want to make  
16 sure we're on the same page. So I could ask you a  
17 question like, Did you analyze different resolution  
18 options available to Johnson & Johnson in the summer  
19 of 2021? I'm not looking for you to tell me what  
20 you concluded or what somebody else said about a  
21 particular option. I'm just looking for yes or no,  
22 did you do that, for that type of question.

23 Is that clear?

24 A. I understand.

25 MR. POLLOCK: Your Honor, I object to

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1 the entire line of questioning proposed. Yuna gives  
2 them the Hobson's choice; put up or shut up. Show  
3 me the documents so that we can inquire. You got  
4 billing sheets; show them to me. You got time  
5 entries; show them to me. You've got actual memos;  
6 show them to me.

7 I know that we've had this discussion  
8 before, but I have to raise it again, because now he  
9 intentionally wants to go through a series of  
10 discussions. But I can't test the proposition, and,  
11 respectfully, neither can you.

12 THE COURT: Unless we ask for in  
13 camera review. So, should the need arise,  
14 Mr. Pollock, I'm going to overrule the objection,  
15 but I understand the nature of the objection.

16 To the extent there's some  
17 substantive aspects that Mr. Conlan needs to review,  
18 Mr. Brody, we'll hear them. All right?

19 MR. BRODY: Yes, we will, and --

20 THE COURT: To answer, you know, yes  
21 or no in that context, I understand the nature of  
22 the question, but, you know, to have an adequate  
23 ability to test the substance, we may need to see  
24 some in camera review.

25 So I will leave that avenue open for

1 the Court.

2 MR. BRODY: Absolutely, Your Honor,  
3 and we're prepared to proceed that way, if it  
4 becomes necessary.

5 I will just say, I mean, we didn't  
6 hear it, but that sounded like another best evidence  
7 rule, a 1002 objection. And I think the law is  
8 fairly clear that that's not a valid best evidence  
9 rule objection.

10 Testimony about events, even if there  
11 are documents that may corroborate those events,  
12 testimony is primary evidence, not secondary  
13 evidence, and both New Jersey caselaw, as well as  
14 commentaries on the New Jersey rule, which is  
15 identical to the federal rule, confirm that.

16 THE COURT: I don't disagree with  
17 you.

18 Mr. Pollock?

19 MR. POLLOCK: Two very brief points  
20 and I'll get out of your way.

21 One, the record was closed and we  
22 decided the record was closed, and I -- obviously,  
23 it's your courtroom, Your Honors, you can do what  
24 you see fit. Obviously, I will object to reopening  
25 the record because I prepared my case with a case

1 that J&J filed. I didn't want to have -- and we  
2 talked and had this exact discussion remotely, not  
3 in this courtroom, and you were in the other room,  
4 but the discussion was, We'll be here until August  
5 if we go through this back and forth.

6 So I just -- I don't want to waive my  
7 objection, but you can tell me, Hey, I'm the Judge.  
8 You can do what you want to do. I understand that.

9 THE COURT: That's quite all right.  
10 That's okay.

11 MR. POLLOCK: The second thing is --

12 THE COURT: You need to protect your  
13 record.

14 MR. POLLOCK: The second point I  
15 would raise is, I disagree strongly with my  
16 colleague here. I think the best evidence rule is  
17 precisely at play. I'm not talking about whether a  
18 copy of the check is fake. I'm not talking about  
19 whether the contract is really the true and  
20 authentic contract.

21 You're talking, is by his established  
22 testimony, 1600 hours and plus and change, if you  
23 were to ask him what did he do on March 31st,  
24 September 1, what did you do in July, how the hell  
25 do I ever test that? I can't. Without the

1 document, I can't do it.

2 So I think the best evidence rule in  
3 this case specifically and clearly applies. With  
4 that being said, you understand my objection.

5 THE COURT: I do. But let's hear the  
6 -- you know, I didn't hear any questions yet.  
7 Obviously, if Mr. Conlan understands the question  
8 and can answer the question without a document,  
9 we'll see.

10 So, but you may proceed, Mr. Brody.

11 MR. BRODY: Right.

12 And if I may, I just feel the need  
13 briefly to respond, because we've heard over and  
14 over again, you know, Oh, the record is closed.  
15 Well, we're actually -- we're in an evidentiary  
16 hearing, and this hearing, as well as the testimony  
17 that the Court received on March 25th, is an  
18 important part of the record, and obviously it is  
19 something the Court indicated it needed.

20 It's also the case that, subsequent  
21 to the time that we argued the motion before Your  
22 Honor, Judge Porto, on January 17th, and before  
23 Judge Singh on February 7th, that we, through this  
24 privilege log that has been marked as a hearing  
25 exhibit and that Ms. Sharko submitted, Judge Porto,



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1 to you, and appears on the MDL docket, you know,  
2 through that, we have discovered a significant  
3 amount of additional information that could not have  
4 been part of the record at that prior time.

5 But I'm ready to proceed.

6 THE COURT: Please, yeah.

7 BY MR. BRODY:

8 Q. So, let's start with some of the  
9 things that may not be tied to, you know, something  
10 like the Imerys bankruptcy, in particular, but more  
11 broadly. And then I want to focus in on some of the  
12 other things you did when you were outside counsel  
13 for Johnson & Johnson.

14 So, you participated in with the J&J  
15 litigation team analysis of litigation events and  
16 their potential impact on global resolution of the  
17 talc cases for J&J, didn't you?

18 A. Yes, in context of the Imerys North  
19 America bankruptcy case.

20 Q. You looked at potential structures  
21 for all-in settlements to achieve J&J's objectives,  
22 correct?

23 A. Yes.

24 MR. POLLOCK: Continuing objection to  
25 leading, Your Honor.

1 THE COURT: Thank you.

2 MR. BRODY: I'll just rephrase it.

3 THE COURT: Okay.

4 BY MR. BRODY:

5 Q. Were you privy to J&J's thinking on  
6 methods to justify expectations for the future  
7 incidence of ovarian cancer claims?

8 A. Can you repeat that, or explain it?

9 Q. Sure. Let me ask it -- let me ask it  
10 this way.

11 Were you privy to, did you have the  
12 opportunity to discuss, analyze Johnson & Johnson's  
13 thinking, views, including of the inhouse counsel  
14 and the outhouse counsel team -- outside counsel  
15 team -- methods to justify the teams' expectations  
16 for future incidence of ovary cancer claims?

17 MR. POLLOCK: Objection; ambiguous,  
18 Your Honor.

19 THE COURT: Well, did you understand  
20 the question, Mr. Conlan?

21 THE WITNESS: Yes, but I -- this way.

22 The desire to cut off future claims  
23 as opposed to current claims is the key to virtually  
24 every mass tort bankruptcy for a co-defendant and  
25 for the company in bankruptcy.

1                   As for what percentage of claims,  
2                   what the value of the futures were, all that, no.  
3                   That's just not my area. My area was methods to  
4                   capture futures. Currents are easy; futures, not so  
5                   easy.

6                   BY MR. BRODY:

7                   Q.           And as part of the discussions that  
8                   you engaged in, you were a party to consideration of  
9                   whether J&J expected the incidence of future talc  
10                  claims to go up or go down, weren't you?

11                  MR. POLLOCK: Objection; hearsay.

12                  THE COURT: Mr. Brody?

13                  MR. BRODY: I'm just asking if he  
14                  participated in discussions. I'm not asking him for  
15                  the truth of any matters asserted. In fact, I don't  
16                  want him to reveal matters asserted in those  
17                  discussions.

18                  THE COURT: The objection is  
19                  overruled.

20                  MR. BRODY: Thank you.

21                  THE WITNESS: I don't recall being  
22                  party to discussions on whether futures would go up  
23                  or go down.

24                  BY MR. BRODY:

25                  Q.           And do you -- well, let me ask it

1     this way: Do you recall receiving communications  
2     containing analysis of that?

3             A.           I don't recall that.

4             Q.           Okay. Let's see if we can refresh  
5     your recollection.

6                     MR. BRODY: And we're going to have  
7     to do this in camera, Your Honor. We're already at  
8     that point. I have copies for you. Mr. Conlan can  
9     look at it, and I can ask him if it refreshes his  
10    recollection.

11                    THE COURT: And have a copy for  
12    Mr. Pollock.

13                    MR. BRODY: I can't give it to  
14    Mr. Pollock if it's in camera, because we have a  
15    privilege waiver issue here.

16                    MR. POLLOCK: This is precisely the  
17    problem that Yuna predicted, Your Honor. Hobson --  
18    she had a choice. Second paragraph, Rivera-Soto is  
19    saying it right below Hobson's choice. Either put  
20    up or shut up. Put the documents in, or don't.  
21    Because you -- that client refused to put in the  
22    communications into the record. And obviously, as  
23    you both know, the crucible of cross-examination is  
24    critical here.

25                    So I -- I'm not -- not only do not

1 have the document, do not understand it, not only  
2 forget the fact that the record is closed, now I'm  
3 not going to be able to see it.

4 THE COURT: Why don't we, with the  
5 objection, why don't we continue on with another  
6 line of questioning, and Judge Singh and I will  
7 address this during a break. Okay? Can you --

8 MR. BRODY: Sure.

9 THE COURT: -- bifurcate your line of  
10 questioning, Mr. Brody?

11 MR. BRODY: Sure. We can set that  
12 question aside for now. I don't know how far we're  
13 going to get, but I can do that for now.

14 THE COURT: Okay.

15 BY MR. BRODY:

16 Q. So you would agree that -- let me  
17 just ask you this, since I want to stay away from  
18 leading questions, if I can.

19 Did you engage in privileged and  
20 confidential analysis of future claimants  
21 allocations and models that would be needed to  
22 derive a settlement outcome for the talc claims for  
23 Johnson & Johnson?

24 A. Analysis?

25 Q. Correct.

1           A.           No.   Certainly, I was present when  
2   other people who were in that area talked about it,  
3   but that's just not my area.

4           Q.           Did you bill for it?   You may not  
5   have done it.   Did you bill for it?

6           A.           Did I bill for the fact that I was  
7   sitting there when it was discussed, someone else's  
8   area?   I probably did.

9           Q.           So somebody else was analyzing  
10   futures claimants allocations and models to derive  
11   settlement outcomes for J&J in a privileged and  
12   confidential setting, and you were sitting there?

13          A.           Yeah.   Imagine a bunch of people  
14   sitting at computer screens.   It's COVID.   And  
15   people are only talking when their area of expertise  
16   is implicated, so.

17          Q.           And you're -- and you're there and  
18   you're listening?

19          A.           Yes.

20          Q.           And --

21          A.           Trying to listen.

22          Q.           And you're taking it all in.   It's a  
23   privileged and confidential setting.   You're not  
24   inviting people in from the outside here, right?

25          A.           Correct, right.

1 Q. And you're billing for that time?

2 A. Yes.

3 Q. And your billing is accurate?

4 A. I believe so.

5 MR. BRODY: So, we're at another one  
6 of those situations, Your Honor, where -- I mean, if  
7 -- if the Court can receive in camera the billing  
8 records, we're now at a point on cross-examination  
9 where those billing records are very relevant for  
10 impeachment purposes, because we have a situation  
11 where Mr. Conlan just testified that he didn't bill  
12 for analysis.

13 THE COURT: But he was there, and he  
14 was billing for his time. I mean, I'm not --

15 MR. BRODY: Right.

16 THE COURT: Yeah, I can let  
17 Mr. Conlan explain that, but that's -- that's the  
18 nature of the profession; isn't it, Mr. Brody?

19 MR. BRODY: Well, if -- if I were  
20 going to bill a client for time spent analyzing  
21 models, I would have actually conducted the  
22 analysis. If I merely attended a call where people,  
23 different people were discussing potential  
24 resolutions of something, I would bill for, you  
25 know, "Attend team meeting where resolutions are

1 discussed." I wouldn't bill as if I had done the  
2 analysis.

3 THE COURT: Unless your retainer  
4 agreement said otherwise; am I right? If your  
5 retainer agreement provided for an aspect of  
6 billing, and Mr. Conlan hypothetically billed in the  
7 manner that the retainer agreement provided for,  
8 doesn't that comport with our understanding of  
9 billing for the clients?

10 MR. BRODY: I -- I'm having trouble  
11 envisioning a retainer that said you can bill for  
12 analyzing things --

13 THE COURT: I'm not saying --

14 MR. BRODY: -- that you didn't  
15 analyze.

16 THE COURT: I'm not saying it  
17 existed. I'm not saying it existed or didn't. But  
18 wouldn't that play a part of the consideration here?

19 MR. BRODY: I -- let me just ask this  
20 is question.

21 BY MR. BRODY:

22 Q. Mr. Conlan, did you feel that you  
23 could bill Johnson & Johnson for analyzing things  
24 that you didn't analyze?

25 MR. POLLOCK: Your Honor, I have an



1 objection, and I would ask for a two-minute break,  
2 where I think I may have a solution to this problem,  
3 but I need to confer with Mr. Birchfield for one  
4 second, because, obviously, this is going to lead  
5 to, What was the retainer agreement? What were the  
6 billing practices? What were the billing protocols?  
7 And now we're going to have more privilege  
8 objections.

9 I think I may have a solution. If  
10 you'll give me two minutes, I think I can find a  
11 solution to this.

12 THE COURT: Okay. But I'm going to  
13 overrule the objection. I'm going to hear  
14 Mr. Conlan answer that question first.

15 MR. POLLOCK: Okay. Go ahead.

16 THE WITNESS: Can you repeat the  
17 question?

18 MR. BRODY: Sure.

19 BY MR. BRODY:

20 Q. The question was: When you were  
21 doing work for Johnson & Johnson, did you bill the  
22 company for analyzing things that you didn't  
23 analyze?

24 A. I really don't know how to answer  
25 that question. If it was a four-hour conference

1 call and there were ten different types of experts,  
2 or three in various areas, I would sit there and  
3 listen to see if anything that was relevant to my  
4 expertise came up.

5 Q. So, is that a yes, you would bill  
6 Johnson & Johnson for analyzing futures claimants  
7 allocations and models when you didn't do the  
8 analysis?

9 MR. POLLOCK: Objection, Your Honor,  
10 it's argumentative, when it's not supposed to be  
11 leading, and asked and answered.

12 When you get a second, I would like  
13 to have a one-minute break just to talk to Andy real  
14 briefly.

15 THE COURT: And maybe Judge Singh and  
16 I not leave the room. All right? Can you do the  
17 break without us leaving the --

18 MR. POLLOCK: Absolutely. I just  
19 need one minute in the hallway.

20 THE COURT: I'm going to overrule the  
21 objection.

22 Mr. Conlan, did you understand that  
23 question posed by Mr. Brody?

24 THE WITNESS: Not really, to be frank  
25 with you, because, again, they are lengthy calls,

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1     there are people who have subject matter expertise  
2     in particular buckets, all of whom are listening for  
3     issues that might be relevant to their subject  
4     matter, listening to see if one of them comes up,  
5     for example, that's bankruptcy relevant. But the  
6     entire call would be billed.

7     BY MR. BRODY:

8             Q.           So, my question was whether that's a  
9     yes, you did at times bill Johnson & Johnson for  
10    things like analyzing future claims allocations and  
11    models to derive settlement outcomes when you did  
12    not actually do that?

13                   MR. POLLOCK: Objection, Your Honor,  
14    argumentative. He's asked and answered the question  
15    twice now.

16                   THE COURT: I'll overrule the  
17    objection.

18                   Do you understand that question,  
19    Mr. Conlan?

20                   THE WITNESS: I billed for the entire  
21    time of the call, even if only five minutes  
22    implicated anything that was in my subject matter  
23    expertise.

24                   THE COURT: Okay. Let's stop there.  
25    We'll take our break. Let's go off the record.

1 Judge Singh and I will remain on the bench here.

2 MR. POLLOCK: Real briefly, Your  
3 Honor. Thank you.

4 (Brief pause.)

5 MR. POLLOCK: Your Honor, I have a  
6 proposal.

7 THE COURT: Did we go back on the  
8 record?

9 MR. POLLOCK: I'm sorry. I have a  
10 proposal that might solve the dilemma we've got,  
11 which is that we will stipulate, consistent with  
12 Mr. Conlan's last three answers, basically; that,  
13 yes, I billed for the phone calls, I did hear these  
14 issues, I was there monitoring the discussions, I  
15 billed my time.

16 So that -- that solves, to some  
17 degree, the need to get into infinite detail and  
18 repeat each time, "Were you there? Did you hear  
19 this?"

20 Where I maintain my objection is that  
21 if there's going to be more specificity as to what,  
22 exactly, did he do with it, I want to see the  
23 timesheets. I want to see exactly what he did. I  
24 have no doubt -- I will stipulate that he -- and I  
25 haven't even seen these timesheets, so I'm

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1 stipulating to something I haven't even seen before.  
2 I hope Fox's malpractice policy covers that one.

3 But the reality is, I will stipulate  
4 that he billed accurately, honestly, truthfully, and  
5 that he heard whatever he heard, and that he did  
6 whatever he did. I don't think I can go any further  
7 than that.

8 THE COURT: Mr. Brody?

9 MR. BRODY: So, a couple things, Your  
10 Honor.

11 First of all, the use of the  
12 documents, for example, showing billing entries to  
13 Mr. Conlan would be on impeachment purposes -- for  
14 impeachment purposes or to refresh his recollection.  
15 It's not as if they are being offered into evidence.

16 But, you know, given the stipulation,  
17 you know, I wonder if what we ought to do, if the  
18 stipulation is that Mr. Conlan billed accurately,  
19 that his billing records are correct, that they  
20 accurately describe what he did, we should make  
21 those a part of the record in conjunction with that  
22 stipulation.

23 It will have to be submitted in  
24 camera, and it will only be the Court that is  
25 reviewing those billing records.

1 But that seems to be, one, a  
2 solution, that the Court receives them as evidence  
3 and as part of the record in camera for purposes of  
4 the disqualification motion. It will also have the  
5 benefit of shortening this cross-examination  
6 considerably.

7 THE COURT: Without hearing -- and  
8 just for our record, you know, my statements with  
9 regard to retainer agreements, I'm not making  
10 anybody's argument. I'm just letting counsel know  
11 that there are other parameters at play here,  
12 possibly, with regard to billing.

13 With regard to having the Court just  
14 look at the documents, Mr. Brody, in camera, without  
15 Mr. Pollock, the Court has trouble with that,  
16 because there's no basis for any appropriate  
17 objection.

18 Candidly, I would like to have heard  
19 about this prior to coming here today. We could  
20 have addressed it in maybe a manner where a  
21 confidentiality agreement could have been entered,  
22 considered, for counsel's or attorney's eyes only.  
23 I want to make sure, in protecting our record,  
24 subject to any appeal, which is likely, but we  
25 don't -- you know, we don't decide cases based on

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1 appeals. If they happen, they happen. We make the  
2 best record that we can.

3 So, that's my thoughts, Mr. Brody and  
4 Mr. Pollock, with regard to that.

5 MR. BRODY: And so I wonder, Your  
6 Honor, just if -- if the stipulation that was  
7 proposed that the billing records are accurate, that  
8 they accurately describe what Mr. Conlan did, and  
9 for how long he did it, as he's testified, that he  
10 felt his billing records were accurate and the time  
11 was accurate, if that, you know, solves the  
12 question, it's -- it would be submitted by  
13 stipulation.

14 And it's obviously -- I mean,  
15 frankly, we're getting into now one of the reasons  
16 why New Jersey law recognizes a presumption of  
17 shared confidences in this situation.

18 THE COURT: Got it, yeah.

19 MR. BRODY: Because you get into this  
20 exact scenario, where, you know, I have material  
21 that is privileged, but is, as you see right now,  
22 important to the examination of a witness that the  
23 Court has said it wants to hear from before deciding  
24 a motion.

25 THE COURT: Well, we're here to

1 determine whether J&J confidences were shared by  
2 Mr. Conlan to Mr. Birchfield. That's what our focus  
3 here is.

4 The fact that Mr. Conlan has  
5 testified he had privileged and confidential  
6 information, he billed, he billed for his time, his  
7 bills, to the best of his recollection, were  
8 accurate for his time, the Court accepts that  
9 stipulation, and that's consistent with the  
10 testimony here.

11 I'm not making any credibility  
12 argument at this point, but it's consistent with  
13 what I'm hearing today.

14 MR. BRODY: Right. And I just -- the  
15 next question, though, is, you know, yes, he was  
16 exposed to privileged and confidential information;  
17 it's what kinds of privileged and confidential  
18 information that ultimately becomes important, given  
19 the arguments that we've heard from Beasley Allen  
20 throughout, you know, the course of the Courts'  
21 consideration of these motions.

22 And so can I -- I know Mr. Conlan has  
23 -- or Mr. Pollock, excuse me, hasn't responded to my  
24 proposal. But, given the stipulation that he has  
25 proposed that this material is accurate, I would ask



1     that the Court receive these, you know, frankly, as  
2     evidence, in camera, and it's -- we're in a  
3     situation here where in order to avoid any charge of  
4     privilege waiver, I don't know that there's another  
5     solution where we could hand these over to, you  
6     know, Johnson & Johnson's -- one of Johnson &  
7     Johnson's opponents, adversaries, counsel for  
8     numerous plaintiffs in this litigation.

9                     THE COURT: Mr. Pollock?

10                    MR. POLLOCK: Two thoughts. One,  
11     Mr. Brody keeps rewriting what my stipulation was.  
12     I stipulated that, as I said from the very first  
13     time I met you, Your Honor, that I have no doubt  
14     that Jim Conlan had access to confidential and  
15     privileged --

16                    THE COURT: He just testified to  
17     that. The fact that you acknowledge it, we heard  
18     that in court today.

19                    MR. POLLOCK: Right. So that's my  
20     story and I'm sticking with it.

21                    Two, the fact is that I also said  
22     that the -- Mr. Conlan was quite clear each time  
23     Mr. Brody questioned him, Did you have access to the  
24     formula for Coca-Cola, did you have access, you  
25     know, to the formula for whatever. His answer was,

1 Yeah, but remember, my role is here, it ain't this  
2 whole thing. I'm listening, I've got my antenna up,  
3 I'm listening for the piece that relates to me. I  
4 have no doubt that that was discussed. He's been  
5 very clear.

6 And so the fact -- and what Mr. Brody  
7 keeps on saying is that the timesheets are what  
8 you're going to focus on. So I would beg you, if  
9 you're going to do this, which obviously I have no  
10 problem with, that you remember that Mr. Conlan has  
11 stuck with the same story three times consistently.

12 Lastly, I would point out that Yuna  
13 O Builders 109 is right on point at page 129. I'm  
14 sure you both read it. But, in that, they faced  
15 precisely this problem. And the question was, If  
16 defendant's submissions vaguely claimed only  
17 information concerning pending and business-related  
18 matters.

19 So let's assume we get more specific.  
20 It's super secret discussions regarding how Mr. Haas  
21 has a brilliant theory for how I'm going to, you  
22 know, terminate all the plaintiffs' claims.  
23 Whatever it is, right? One, the crucible of  
24 cross-examination fails. That's what these --  
25 that's what Justice Rivera-Soto writing for the

1 Court was addressing, is that you've got to put up,  
2 my language, put up or shut up. You either put it  
3 out there, or you don't.

4 So, providing it to you in court, and  
5 you're both intelligent readers, doesn't really  
6 solve my problem. I've got to represent Beasley  
7 Allen and Andy Birchfield, who committed years and  
8 years to this case. So I would respectfully submit  
9 that's not what the Supreme Court expects. It's not  
10 what they accept.

11 And I have already given the essence  
12 of what he really -- Mr. Brody really wants. Yes, I  
13 did it on the first day. Jim Conlan knew -- he  
14 listened to all kinds of confidential stuff. I  
15 don't doubt it at all. The question is, Did he  
16 share it? And when it comes to the "did he share  
17 it" part, I'm going to be very laser focused because  
18 it has to be significantly harmful. Trupos, "it has  
19 to be significantly harmful."

20 So it's not enough to jump around and  
21 wave and say there were confidential discussions, we  
22 were talking about the formula for Coca-Cola, we  
23 have all this other stuff. You have to show me the  
24 goods. What, exactly, is it that Jim Conlan learned  
25 in these discussions that was disclosed, and that

1 issue we're not addressing.

2 So I really think we're in a sideshow  
3 over here regarding did he have confidential  
4 information. He's conceded it, I've conceded it.  
5 The only one fighting it, apparently, is J&J.

6 THE COURT: Thank you, Mr. Pollock.

7 Mr. Brody, why don't we really -- I  
8 understand you have your case. Why don't we cut to  
9 the chase and focus topically. Reserve, you know,  
10 put aside the in camera issues. Why don't you focus  
11 topically on what exactly J&J believes that  
12 Mr. Conlan knew and then ultimately shared with  
13 Mr. Birchfield.

14 MR. BRODY: Fair enough, Your Honor.  
15 Let me frame questions that way, see where we get.  
16 Reserving, of course --

17 THE COURT: Absolutely.

18 MR. BRODY: -- the right to, you  
19 know, come back to this issue of the billing  
20 records, as well as -- as may be relevant. I mean,  
21 there are certainly -- and this is just a  
22 snapshot -- an extraordinary number of privileged  
23 and confidential communications that speak to the  
24 scope of the work that Mr. Conlan did as outside  
25 counsel for J&J.

1 But I will --

2 THE COURT: Why don't you paint that  
3 picture for us.

4 MR. BRODY: Certainly.

5 BY MR. BRODY:

6 Q. You learned, Mr. Conlan, as outside  
7 counsel for the company how Johnson & Johnson  
8 evaluated the viability of the claims under  
9 different legal regimes, didn't you?

10 A. Could you explain what you mean,  
11 "under different legal regimes"?

12 Q. Sure. You learned how J&J analyzed  
13 whether the validity of claims associated with a  
14 latent tort in terms of things like limitations,  
15 ability to accurately plead that kind of claim might  
16 differ from jurisdiction to jurisdiction, thereby  
17 impacting the evaluation of the number of viable  
18 future claims that would be associated with this  
19 particular mass tort?

20 A. I don't recall that. What I recall,  
21 to help answer that question, is that J&J thought  
22 all of the claims were unfounded in science and  
23 fact. And the only distinctions I ever heard was  
24 there's a diagnosis from the --

25 Q. I don't -- I don't want you to -- I

1 don't want you to say what you heard.

2 A. Okay.

3 Q. I -- I'm -- and again, you know,  
4 we're in a situation where it's the company's  
5 privilege. The company has not waived that  
6 privilege.

7 MR. POLLOCK: Your Honor, objection.  
8 You can't take the part of the answer you want and  
9 not the part of the answer you don't want.

10 THE COURT: I don't disagree.

11 MR. BRODY: The -- he was proceeding  
12 to answer a different question. The question was --

13 THE COURT: Well, I don't -- I don't  
14 necessarily know that, because you asked from  
15 jurisdiction to jurisdiction and different legal  
16 regimes. And I think Mr. Conlan -- I'm not making  
17 any argument, but what I understood the testimony  
18 was, was going in a direction of how those  
19 jurisdictional issues impacted his work.

20 MR. BRODY: He had gone already, Your  
21 Honor, in a different direction at that point.

22 THE COURT: Okay.

23 MR. BRODY: As to shifting from where  
24 my limitations are with a client, how might that  
25 differ from jurisdiction to jurisdiction, how that

1 might impact the incidence of future claims to, you  
2 know, what was J&J's view the science and what is  
3 J&J's view of the science underlying the talc claim,  
4 which is a completely different question.

5 THE COURT: Okay. Well --

6 MR. POLLOCK: I respectfully don't  
7 know what he was going to say because I didn't get  
8 to hear him. And Mr. Haas gave incredibly long  
9 allocutions of like a page-and-a-half answers, and  
10 now we're going to cut Mr. Conlan down to the three  
11 lines, and when Mr. Brody doesn't like it, he's  
12 going to cut him off. I will have a standing  
13 objection on this point.

14 THE COURT: Well, I'm going to make  
15 sure. I'm going to ask the witness, as I did  
16 before, you know, I permitted the long answers to go  
17 because it was in context. So I want to make sure  
18 that Mr. Conlan has the ability.

19 If the question addresses an issue  
20 that, perhaps, goes into the attorney-client  
21 privilege, Mr. Brody, counsel needs to be careful.  
22 But I want to permit the witness to be able to  
23 answer the question so that we can resolve this  
24 issue.

25 MR. BRODY: Certainly, Your Honor.

1 And this was a case where I think the question was  
2 focused, the answer was not, which is why I needed  
3 to stop Mr. Conlan, and to do so based on the  
4 privilege objection.

5 THE COURT: Okay.

6 BY MR. BRODY:

7 Q. So, you engaged during the time that  
8 you were representing Johnson & Johnson, Mr. Conlan,  
9 in discussions concerning legal arguments -- and  
10 this is a yes or no -- that might be advanced on  
11 claim validity, right?

12 MR. POLLOCK: Objection. Mr. Conlan,  
13 if you can answer it yes or no, you can answer it  
14 that way, but it's the Court's purview, not  
15 Mr. Brody's, to direct you how to answer.

16 THE WITNESS: No, not that I recall.  
17 May I expand?

18 THE COURT: Let's hear that,  
19 Mr. Conlan.

20 THE WITNESS: Okay. I'm not a  
21 products liability lawyer. I'm not a personal  
22 injury lawyer. I've never brought a case. I've  
23 never defended a case. It's not my area. I'm a --  
24 I was a restructuring lawyer. And so, if others  
25 were talking about that, it was lost on me. It was



1 solely -- my role is how to use proceedings to  
2 capture not just currents, but futures.

3 But I will say, in these all-hands  
4 meetings, a significant number of what -- the items  
5 that were being discussed were just not in my area.  
6 And, frankly, the items I would discuss were not in  
7 the area of lots of other people on those calls.

8 BY MR. BRODY:

9 Q. So your testimony is that you were  
10 exposed to all this privileged and confidential  
11 information; you just didn't understand it?

12 MR. POLLOCK: Objection.

13 THE WITNESS: On some of it, that  
14 would be true.

15 BY MR. BRODY:

16 Q. And if somebody was talking about --

17 THE COURT: I'll overrule the  
18 objection.

19 BY MR. BRODY:

20 Q. And if somebody was going to -- was  
21 talking about how do we determine whether a certain  
22 portion of the future claims that are being  
23 predicted as part of this model, this settlement  
24 model, you know, how is -- how is the law in  
25 different jurisdictions going to impact the validity

1 of the future claims, you just didn't understand  
2 that, but you were on the calls?

3 A. Yeah. I certainly don't recall that.

4 Q. All right.

5 MR. BRODY: This is another -- I'll  
6 move forward, Your Honor, but I'm going to mark this  
7 point, as well, because this is another area where I  
8 believe we should be able to, without waiving  
9 privilege showing the document merely to Mr. Conlan,  
10 use a privileged document to refresh his  
11 recollection as to the yes or no portion of this  
12 question.

13 But I'll move forward, given the  
14 Courts' preference that we see where we can get to  
15 and come back to this.

16 THE COURT: Also, keep in mind, if  
17 the Court receives material in camera, it's  
18 generally reviewed and a determination is made  
19 whether it remains in camera or it should be  
20 distributed.

21 So, you know, keep in mind,  
22 Mr. Brody, that that's also an option. And I'm not  
23 saying that happens, will happen, but that's, you  
24 know, a consideration when the Court receives in  
25 camera material.

1 MR. POLLOCK: And if it does refresh  
2 the witness' recollection, the standard practice is,  
3 at that point, now that document is admitted into  
4 evidence. You have now -- you have used a document  
5 to refresh their recollection. I've never heard of  
6 a Court saying, I've refreshed your recollection,  
7 but I'm still going to keep it in the super secret  
8 box, because it's now a part of the record.

9 So I think the whole argument is  
10 self-defeating.

11 MR. BRODY: I don't -- I don't think  
12 that's -- I don't think that's an objection,  
13 frankly.

14 THE COURT: You may continue,  
15 Mr. Brody.

16 MR. BRODY: All right. Thank you.  
17 BY MR. BRODY:

18 Q. Why don't we -- why don't we talk  
19 about it, since you brought it up, Mr. Conlan, why  
20 don't we talk about the Imerys bankruptcy. Okay?

21 A. Okay.

22 Q. As a starting point, you would agree  
23 that the ovarian cancer claims against Johnson &  
24 Johnson arise out of the same nucleus of operative  
25 facts as the ovarian claims against the Imerys

1 debtors, correct?

2 A. Some of them. There were claims  
3 against the Imerys debtors that related to other  
4 products that were not manufactured by Johnson &  
5 Johnson, like Colgate-Palmolive.

6 Q. So, the answer -- but the answer to  
7 my question was -- and my question, Mr. Conlan, was  
8 focused on the ovarian cancer claims, and so --  
9 against Johnson & Johnson. And the ovarian cancer  
10 claims against Johnson & Johnson arise out of the  
11 same nucleus of operative facts as the claims  
12 against the Imerys debtors related to -- from people  
13 who used Johnson & Johnson products; fair?

14 A. With that clarification, yes.

15 Q. All right. And thank you. I  
16 understand the distinction you were making, and I'm  
17 glad we could get on the same page with that one.

18 At the time, let's say, in connection  
19 with that, sticking with Imerys, you were privy to  
20 privileged and confidential analysis of factors  
21 impacting the potential for a channeling injunction  
22 through the Imerys bankruptcy, correct?

23 MR. POLLOCK: Can I have a standing  
24 objection, Judge, because I don't want to interrupt  
25 the flow.

1 THE COURT: That's fine.

2 MR. POLLOCK: Thank you.

3 THE WITNESS: I don't know what you  
4 mean by factors affecting the channeling injunction.  
5 BY MR. BRODY:

6 Q. You were on multiple teams, meetings,  
7 calls with the Weil Gotshal team, correct?

8 A. Correct.

9 Q. And the Weil Gotshal team analyzed  
10 the potential for J&J to secure a channeling  
11 injunction through the Imerys bankruptcy for the  
12 talc claims, correct?

13 A. May I expand just to make sure I'm  
14 answering accurately?

15 Q. You may. And any time I ask you a  
16 question, if you need a clarification or you have  
17 questions, just let me know.

18 A. Sure. During the course of the  
19 Imerys North America bankruptcy, J&J -- this is  
20 public -- J&J attempted what's called a bolt-on,  
21 meaning to bolt on a J&J reorganization plan to the  
22 Imerys plan, in an effort to utilize the Imerys  
23 bankruptcy to resolve the claims against it.  
24 Importantly, not just current, but futures. And so,  
25 in that context, Mr. Brody, yes, the bolt-on effort.

1 Q. Right. And you participated in  
2 numerous calls with both the inhouse and the outside  
3 counsel teams devoted to that subject, correct?

4 A. Yes, and even lawyers for the tort  
5 claimants committee who were part of the bolt-on  
6 effort.

7 Q. And you, in connection with that,  
8 received detailed analysis that had been prepared by  
9 the Weil Gotshal team, correct?

10 A. I probably did.

11 Q. And that detailed analysis was  
12 privileged and confidential analysis that was  
13 prepared for discussion with the Johnson & Johnson  
14 legal team, correct?

15 A. I would assume, but I don't recall.

16 Q. Without revealing the substance, and  
17 I'm going to ask if you do recall this, some of the  
18 issues that were discussed were the potential for a  
19 channeling injunction to include not just ovarian  
20 claims, but mesothelioma claims, correct?

21 A. Yes. That's what the bolt-on plan  
22 publicly said.

23 Q. And -- but internally you were part  
24 of discussions of "What's our strategy for getting  
25 there? How do we achieve that?" Right?

1 MR. POLLOCK: Objection.

2 THE COURT: The nature of your  
3 objection, Mr. Pollock?

4 MR. POLLOCK: Again, he's asking  
5 about what J&J discussed with him. I've got no  
6 documents to back it up, other than the plan, so I  
7 don't know how I would test this proposition. He's  
8 got billing records, timesheets, memos, documents,  
9 communications, Weil Gotshal documents, all kinds of  
10 stuff. I ain't seen none of it. It's not here.

11 And they've had the opportunity.  
12 Both have asked him, Is the record closed? He said  
13 yes. So now I'm suddenly being asked, were these  
14 things generally discussed. I don't want to beat a  
15 dead horse, but it concerns me deeply because that's  
16 not what Yuna is contemplating.

17 THE COURT: Well, we're testing  
18 Mr. Conlan's memory with regard to what was  
19 discussed. So I'm going to overrule the objection.

20 Do you need the question rephrased or  
21 repeated?

22 THE WITNESS: I would appreciate  
23 that, yes.

24 MR. BRODY: Sure. Let me just ask it  
25 again.

1 BY MR. BRODY:

2 Q. You were involved in discussions of  
3 strategies to achieve the objective of a bolt-on  
4 settlement in the Imerys bankruptcy?

5 A. Yes.

6 Q. You were involved in discussion of  
7 the impact of settlement matrices on the potential  
8 for plaintiffs' attorneys' support for a bolt-on  
9 settlement in the Imerys bankruptcy, weren't you?

10 A. Can you expand on that, or explain  
11 it?

12 Q. Sure. You -- let me just ask you  
13 this: You were involved in the discussion of  
14 settlement matrices as a part of an Imerys bolt-on  
15 resolution?

16 A. Not the numbers. I didn't get into  
17 the numbers, for example. I don't even know if this  
18 is the right word, but the cells that are on a  
19 matrix, what each of them means, no. It's not my  
20 area. But what a bankruptcy court could do in a  
21 bolt-on was something where I did have expertise.

22 Q. And you were involved in meetings,  
23 discussions, back and forth of -- that included, and  
24 maybe, you know, it wasn't your area, so you weren't  
25 the one speaking up, but discussions of where do we



1 -- where do we value these; how do we value these;  
2 and how do we get this to the point where it's going  
3 to drive this to a total number that's going to be  
4 okay not just for us, but potentially to gain the  
5 support of the plaintiffs' attorneys that we need  
6 support from.

7 A. I don't recall that. I do recall the  
8 ultimate number that was ascribed in the public  
9 pleadings of the bolt-on plan.

10 MR. BRODY: We're going to have to --  
11 I'm circling it, Your Honor. We're going to have to  
12 put a pin in that one, too.

13 THE COURT: Okay.

14 MR. BRODY: Again, for impeachment or  
15 refreshing recollection purposes.

16 THE COURT: Okay.

17 BY MR. BRODY:

18 Q. You were involved in discussions of  
19 how a matrix would have to value claims in order to  
20 achieve participation sufficient for J&J to meet its  
21 resolution objectives?

22 A. No. Everybody in my industry at that  
23 time would have known that you need 75 percent-plus  
24 votes in favor of the plan by current claimants.

25 Q. I think the question, Mr. Conlan, was

1 a little different than that.

2 A. Okay.

3 Q. My question was: You were involved  
4 in discussions of how a matrix would have to value  
5 claims, what the claim values would have to be in  
6 order to achieve that 75 percent?

7 A. That was Mr. Murdica's area, and I  
8 just deferred to what he said would have to occur in  
9 order for the plan to garner 75 percent-plus of yes  
10 vote from the current claimants.

11 Q. And you and Mr. Murdica discussed  
12 that, didn't you? You have deferred to him. You  
13 had those conversations with him, didn't you?

14 A. I don't recall having discussions  
15 with Mr. Murdica as to how much money has to go for  
16 particular type of claims to garner a 75 percent-  
17 plus vote for current claimants in favor of a plan.  
18 I knew. That's my area. 75 percent-plus required  
19 approval. But it's not 75-percent-plus by cell.  
20 It's 75 percent-plus of all current claimants have  
21 to vote for the plan in order for the Court to  
22 approve it.

23 Q. And so the answer to my question is,  
24 no, sitting here today, you don't recall talking  
25 with Mr. Murdica about strategies to achieve that?

1 MR. POLLOCK: Objection; asked and  
2 answered. Also, it was rephrased --

3 THE COURT: Well, he said he deferred  
4 to him, so I'm going to overrule the objection. He  
5 deferred to Mr. Murdica.

6 So specifically, then, Mr. Conlan.

7 THE WITNESS: Discussing  
8 Mr. Murdica's strategy to get the claimants to vote  
9 yes, I wouldn't call it a discussion. Mr. Murdica  
10 thought he could achieve it.

11 BY MR. BRODY:

12 Q. And so he just said, Hey, Jim Conlan,  
13 here's my strategy for achieving this; and you said,  
14 Okay, Jim, that sounds like an okay strategy to me?

15 A. Yeah, it will come down to the vote.

16 Q. All right. So he -- he said, Here's  
17 my strategy, and you said, All right, that's --  
18 thank you for sharing your thinking with me on this.  
19 I now know your strategy, Mr. Murdica.

20 A. I don't think I used those words.

21 Q. In sum and substance?

22 A. In sum and substance, Mr. Murdica  
23 negotiated, as I understood it, a matrix with the  
24 tort claimants committee, or some members of the  
25 tort claimants committee that they collectively

1 thought would achieve a 75 percent yes vote by  
2 current claimants, and my response to that was,  
3 Okay.

4 Q. And you said you talked to him about  
5 the progress of those negotiations, correct?

6 A. Only in the most generic terms.  
7 Like, I'm working on this plaintiffs' lawyer. Okay.  
8 This plaintiffs' lawyer's votes are important.  
9 Okay. But no, not the type of claim, or the value  
10 of claims, or that level of detail. It just wasn't  
11 my area.

12 Q. So you understood, then, which  
13 plaintiffs' lawyers Mr. Murdica felt were important?

14 A. Yes.

15 Q. And he discussed with you his  
16 progress with the plaintiffs' lawyers that he felt  
17 were important, didn't he?

18 A. Sometimes.

19 Q. And --

20 A. I would describe it more as just name  
21 dropping to describe how the discussions that he was  
22 having were going.

23 Q. You also addressed the importance of  
24 coming up with a settlement matrix that was going to  
25 be sufficient to, and the factors that would go into

1 that, without disclosing any of them. You discussed  
2 that with the Weil Gotshal team, as well, didn't  
3 you, on these meetings that you would have with the  
4 -- with the J&J team?

5 A. The importance of coming up with a  
6 settlement that would achieve a 75 percent-plus yes  
7 vote, I don't even know that we would need to  
8 discuss that. In the world of bankruptcy, that's  
9 just an obvious pillar.

10 Q. That wasn't my question.

11 A. Okay.

12 Q. My question was whether -- was that  
13 you also had discussions with the Weil Gotshal team  
14 about how a deal would have to be structured in  
15 order to try to get that 75 percent participation,  
16 right?

17 A. Sorry, I don't know what you mean by  
18 how it would have to be structured.

19 Q. Could there be -- for example, you  
20 engaged in discussions, including, and without  
21 revealing whether anybody thought this was a good  
22 idea or a bad idea, the advantages or disadvantages  
23 to Johnson & Johnson of an estimation process, as  
24 part of an Imerys resolution, didn't you?

25 A. Not in context, if we're talking

1 about the \$4.2 billion bolt-on settlement. If  
2 you're talking about separate and apart from that...

3 Q. Let me just -- let me ask it  
4 open-ended. Did you ever have those discussions  
5 with the Weil Gotshal team?

6 A. Which discussions? About estimation?

7 Q. About the advantages or disadvantages  
8 to Johnson & Johnson of an estimation process as  
9 part of a resolution of its talc liabilities.

10 A. We did discuss what if Imerys, not  
11 with our participation, but sought an estimation of  
12 the claims against itself, what implication that  
13 would have for Johnson & Johnson.

14 Q. All right. And so -- and those were  
15 privileged and confidential discussions that you had  
16 with the Weil Gotshal team and the inhouse team at  
17 Johnson & Johnson, correct?

18 A. Yes.

19 Q. You discussed with them the -- and  
20 again, without revealing which way you came down on  
21 it, or the substance of it -- the advantages and  
22 disadvantages of an opt-in settlement matrix,  
23 correct?

24 A. Yes.

25 Q. You analyzed the opt-out component;

1 fair?

2 A. What do you mean "analyze"? I  
3 apologize. What do you mean analyze the opt-out  
4 component?

5 Q. You billed for analyzing the opt-out  
6 component of a potential resolution?

7 A. May I expand to respond to that?

8 Q. I don't want you to reveal privileged  
9 information. I don't want to say -- you can say --  
10 you can tell me what you did, but I don't want you  
11 to say, Here are the factors that were important to  
12 J&J, here's what I recommended.

13 A. Can I, in so doing, describe what is  
14 a basic restructuring concept?

15 THE COURT: Basic.

16 THE WITNESS: Basic.

17 THE COURT: Sure.

18 THE WITNESS: Yeah. You need 75  
19 percent approval of current claimants. If all  
20 current claimants have the ability to opt out, the  
21 argument would be you didn't meet the 75 percent.  
22 You basically gave them an opportunity to say yes,  
23 or I'm going back to the tort system. And as  
24 Mr. Murdica testified on the 25th, one of the  
25 questions was, Could we do that and just bind the

1 futures. And so, from a restructuring lawyer  
2 standpoint, that comes from the restructuring world,  
3 the law of the restructuring world. It's not J&J  
4 confidential information.

5 MR. POLLOCK: Your Honor, may I be  
6 heard for a second? If Mr. Brody is going to go  
7 through timesheet after timesheet without date,  
8 without time, without reference, obviously, I have  
9 my standing objection. But I also would like to get  
10 us back to what are we talking about here. What,  
11 specifically, is the issue that Jim Conlan learned  
12 that he then purportedly conveyed to Andy  
13 Birchfield.

14 Because I have already stipulated  
15 that Jim Conlan did a lot of stuff, he's a smart  
16 guy, and he billed for it. Okay. Agreed. I'm  
17 stipulating to timesheets I haven't even seen. I've  
18 done that. Don't tell my partners. But, on this  
19 one, what I am concerned about is, what exactly is  
20 the nexus between what Jim Conlan knew, because  
21 that's what we're here for, right, and what he  
22 conveyed to Andy Birchfield/Beasley Allen.

23 And I would like, respectfully, to be  
24 focused on that issue. Otherwise, we'll be here all  
25 day with timesheets I haven't seen.



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1 THE COURT: Mr. Brody, any thoughts?  
2 I know what you're doing. I think Judge Singh and I  
3 both know what you're doing. You're saying, you did  
4 this, this, this, and this. I got it. And then he  
5 did something else with it, with someone else,  
6 perhaps. All right?

7 How much more time do you need with  
8 regard to this, because I think the testimony is  
9 clear - again, not making any credibility findings -  
10 this privileged information had to do with  
11 bankruptcy, had to do with restructuring, had to do  
12 with J&J, had to do with Imerys. When are we going  
13 to get the segue, the bridge, so to speak, with  
14 regard to whatever else happened with that  
15 information?

16 MR. BRODY: We're going to get to the  
17 bridge in about 20 minutes, I hope.

18 THE COURT: Okay. All right.

19 MR. BRODY: But, Your Honor, I do  
20 think -- I do think these things are important, and  
21 it's important to -- I mean, it's 1600 hours of work  
22 for which Mr. Conlan billed \$2.24 million, and --  
23 but it's important to establish the scope of that  
24 work, the breadth of that work, which was every  
25 single aspect of this, of the talc litigation, of

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1 resolution strategies. It's every single aspect of  
2 it that he was exposed to during that time frame.

3 THE COURT: Okay. I'm hearing it.  
4 We both hear it, Judge Singh and I. And I know what  
5 you're doing. Just keep an eye on, you know,  
6 whatever you want the Court to review, if you raise  
7 it again with regard to in camera, and we'll address  
8 that at that point.

9 MR. BRODY: Yep. Absolutely.

10 BY MR. BRODY:

11 Q. You analyzed, Mr. Conlan, the -- how  
12 to value opt-outs for Johnson & Johnson?

13 MR. POLLOCK: This is in Imerys?

14 MR. BRODY: Yes.

15 THE WITNESS: How to value opt-outs,  
16 people who opted out under the Imerys/J&J bolt-on  
17 plan?

18 BY MR. BRODY:

19 Q. Correct.

20 A. I don't recall how we would value the  
21 opt-outs. As I recall, I thought the approach was  
22 to just assign a dollar per claim, which is a fairly  
23 simple, albeit crude, approach that has been adopted  
24 in bankruptcy courts over the years, rather than  
25 trying to assign a value to the claim that votes yes

1 or no.

2 Q. You billed J&J for analyzing the  
3 value of opt-outs, didn't you?

4 A. Yeah. Well, again, when you say the  
5 value of opt-outs, you mean the amount of opt-outs,  
6 the percentage? I --

7 Q. The -- you -- you -- you analyzed,  
8 first of all, you -- you -- let's start with the  
9 approach. You analyzed the approach to valuing  
10 opt-outs, correct?

11 A. I'm not trying to be difficult. I  
12 don't understand what analyzing the approach to the  
13 value of opt-outs is asking.

14 Q. Well, you just spoke generically  
15 about one approach to valuing opt-outs --

16 A. Right.

17 Q. -- which is a dollar per claim,  
18 right?

19 A. Correct.

20 Q. So, in that sense, without disclosing  
21 any recommendation that you may have made to the  
22 company or any analysis that you may have been privy  
23 to, privileged and confidential analysis, you  
24 certainly engaged in analysis of valuing opt-outs,  
25 didn't you?

1           A.           It wouldn't surprise me if you said  
2           that we described the opt-outs, again, in context of  
3           what it means to have a 75 percent yes vote. For  
4           example, whether somebody votes yes, but opts out,  
5           whether that counts towards the 75 percent, which is  
6           a bankruptcy law question.

7           Q.           And you were involved in discussion  
8           of issues like that related to a potential opt-out  
9           or opt-in settlement matrix, both, while you were  
10          doing privileged and confidential work for Johnson &  
11          Johnson, correct?

12          A.           That -- that sounds believable to me,  
13          as I think back.

14          Q.           You were engaged, or you were  
15          exposed, certainly, to different settlement matrices  
16          that Johnson & Johnson developed internally during  
17          the period where the Imerys bankruptcy was pending,  
18          correct?

19                       MR. POLLOCK: Objection. Same  
20          objection. I can't evaluate a matrix I can't see.

21                       THE COURT: Do you understand the  
22          question, Mr. Conlan?

23                       THE WITNESS: I think I do.

24                       THE COURT: I will overrule the  
25          objection. I understand the nature of your

1 objection, Mr. Pollock.

2 THE WITNESS: What I knew was there  
3 were settlement discussions going back and forth  
4 between Jim Murdica, this is in Imerys, and the tort  
5 claimants committee, and individual lawyers on the  
6 tort claimants committee. As for studying or  
7 understanding any of that, it wasn't my area.

8 BY MR. BRODY:

9 Q. You were -- you received, you  
10 reviewed --

11 A. You mean exposed to it?

12 Q. Yeah, you reviewed them, didn't you?

13 A. No, I would not say I reviewed them.  
14 I would say I was exposed to them, but it wasn't my  
15 area to analyze them and say, Oh, you have this  
16 right, or this wrong, or this is curious.

17 Q. Did you bill for analyzing it?

18 A. I billed for the time when I was on  
19 calls with people. Usually, quite frankly, a lot of  
20 them were all-hands calls, where lots of people were  
21 on them in case their expertise was implicated by  
22 that call.

23 Q. And so you would exposed on those  
24 privileged and confidential calls and meetings to  
25 J&J's and its outside counsels' thinking about these

1 settlement matrices that were being exchanged  
2 internally during that time period, correct?

3 A. Exposed.

4 Q. These were settlement matrices that  
5 -- settlement matrices are standard in mass tort  
6 resolution discussions, right?

7 A. From the mass tort bankruptcies I've  
8 been involved in, yes. But I have not, frankly,  
9 ever been involved in them outside of a bankruptcy.

10 Q. And you -- I mean, you've said you're  
11 not a -- you're not a product liability lawyer,  
12 but --

13 A. Correct.

14 Q. -- you have done a lot of work over  
15 the years related to mass torts, right?

16 A. In context of restructuring.

17 Q. Right. Where things like, as you've  
18 just said, settlement matrices come into play,  
19 correct?

20 A. Correct.

21 Q. And settlement matrices ultimately,  
22 based on number of claimants and where everybody  
23 thinks the plaintiffs fall on the matrix, are going  
24 to drive, in combination with other factors, the  
25 total number, right?

1 MR. POLLOCK: Objection;  
2 argumentative, leading. He's testifying.

3 THE COURT: I'm going to overrule the  
4 objection. I don't think it's argumentative.

5 Do you understand the question?

6 THE WITNESS: I think I do, and I  
7 think I can answer it this way, in context.

8 THE COURT: I don't think it's  
9 leading, either.

10 THE WITNESS: Okay. In context of a  
11 mass tort bankruptcy, the, if you will, resolution  
12 lawyers, like Mr. Murdica, engage with their  
13 opposite number, if you will, among the tort  
14 claimants, and sometimes the futures reps experts.  
15 They come up with the guts of a resolution, if one  
16 is achieved.

17 Those, then, are processed into what  
18 are called trust distribution procedures, which is  
19 how the company, in its bankruptcy plan, will bring  
20 life to that agreement; what the procedures will be,  
21 and how. The bankruptcy lawyers drive the  
22 confirmation process, but the resolution lawyers  
23 drive the trust distribution procedures and the  
24 matrix from which they spring.

25 So, yes, I was exposed, frankly, over

1 decades to that. But I never made it my business to  
2 understand, nor frankly do I think I could have, the  
3 subject matter of those matrices any more than the  
4 resolution lawyers could understand in detail what  
5 the bankruptcy lawyers were doing.

6 BY MR. BRODY:

7 Q. So you were both exposed to them and  
8 you engaged in discussions with Mr. Murdica about  
9 his progress on getting key important -- what he  
10 viewed as key important plaintiffs' lawyers to be on  
11 board with them, right?

12 MR. POLLOCK: Objection; leading,  
13 argumentative.

14 THE COURT: Well, I think it is  
15 leading. Did you, I think would be an appropriate  
16 framing of the question.

17 THE WITNESS: I heard Mr. Murdica say  
18 things to me, like, I think I have so-and-so, or I  
19 talked to so-and-so. He didn't say how, or why, or  
20 what the number was. Frankly, Mr. Murdica used me  
21 as a sounding board on the bankruptcy law, which he  
22 didn't understand, and how it worked. The opposite  
23 was true. I didn't understand what he was doing.

24 BY MR. BRODY:

25 Q. So you had -- I'm just trying to



1 understand. So are you saying that you had  
2 discussions with Mr. Murdica about claim values and  
3 settlement matrices and estimation of future claims,  
4 and you just didn't understand what he was telling  
5 you?

6 A. I don't think I had substantive  
7 discussions on those numerical concepts and those  
8 numerical negotiations with Mr. Murdica. It was  
9 just not -- it was beyond my capabilities.

10 Q. One of the things you did do is you  
11 analyzed the potential for claim values to contain  
12 risk to J&J, right?

13 A. Could you explain that question a  
14 little more?

15 Q. Sure. You know what a settlement  
16 matrix, a settlement grid looks like, right?

17 A. I do.

18 Q. You know what a settlement matrix and  
19 grid looks like when you're talking about the talc  
20 litigation, right?

21 A. They look the same to me, in asbestos  
22 or herbicides or whatever it is.

23 Q. Right. You have different ages of  
24 claimants?

25 A. There's like an X and a Y axis with

1 cells, is how I would describe it.

2 Q. Disease state, age?

3 A. Yes.

4 Q. All right. And you -- you, frankly,  
5 analyzed the feasibility of values in settlement  
6 matrices to contain risk to Johnson & Johnson?

7 MR. POLLOCK: Objection; compound.

8 THE WITNESS: I don't understand the  
9 question. I understand --

10 THE COURT: Overruled. If you could  
11 repeat the question.

12 THE WITNESS: Yeah.

13 MR. BRODY: Sure.

14 BY MR. BRODY:

15 Q. While you were representing Johnson &  
16 Johnson as its outside counsel, you analyzed  
17 settlement grids and claim values for their  
18 potential to contain risk to Johnson & Johnson?

19 A. That's not the language construct of  
20 restructuring. The language construct of  
21 restructuring is that if a bolt-on plan, like the  
22 one that J&J filed in Imerys North America, if it  
23 garnered 75 percent approval from current claimants  
24 and the futures rep didn't object, that would have  
25 given the Court power to channel the claims against

1 J&J to a trust. If that's what you mean by contain  
2 the risk, yes.

3 Q. And you billed for that, didn't you?

4 A. Yes. Explaining how a channeling  
5 injunction works, yes.

6 Q. You billed for analyzing grid  
7 tightness?

8 A. I don't recall using those words, but  
9 you're obviously looking at something where those  
10 words are.

11 Q. You, without revealing the substance  
12 of any of your analysis, you analyzed approaches to  
13 diagnosis requirements for settlement participation,  
14 didn't you?

15 MR. POLLOCK: Can I get a  
16 clarification? Is this part of a narrative of a  
17 time entry, or is this the entire time entry?  
18 Because I would like to know, since he is --  
19 Mr. Conlan has testified, I sat in during this. I  
20 want to know if Mr. Brody is taking out line by line  
21 or a series of issues. I think I'm entitled to at  
22 least that representation, if it's not by line.

23 THE COURT: How about a time frame  
24 with regard to this.

25 MR. BRODY: Sure.

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1 THE COURT: Because we're talking  
2 about 21 months that Mr. Conlan worked for Faegre  
3 Drinker.

4 MR. BRODY: Happy to, Your Honor.

5 THE COURT: Can we get the time  
6 frame.

7 MR. BRODY: Yes.

8 BY MR. BRODY:

9 Q. Let's say, Mr. Conlan, on the time  
10 period of fall of 2021, and before the LTL  
11 bankruptcy filing. You analyzed approaches to  
12 diagnosis requirements for settlement participation,  
13 didn't you?

14 MR. POLLOCK: Your Honor, again, my  
15 problem is this. I don't have the document. I do  
16 believe the best evidence rule does apply. I want  
17 to know from Mr. Brody, if he is going to continue  
18 to do this, is that the entire time entry, which may  
19 have been two paragraphs long, or is it, Hey, this  
20 little snippet over here. I've got to -- he's  
21 entitled to know and I'm entitled to know what's  
22 exactly here.

23 THE COURT: Let me ask you this. Let  
24 me just slow it down. Did you bill weekly?  
25 Monthly? How did you bill J&J when you worked at

1 Faegre Drinker; do you recall?

2 THE WITNESS: Yeah. My practice over  
3 decades as a restructuring lawyer was to, every few  
4 days, go back and try to summarize what it was I  
5 did. And sometimes it was event driven, like  
6 attended this call. Sometimes it was a combination  
7 of event driven and just what I was thinking about  
8 at that time, and why I was thinking about it.

9 THE COURT: Thank you.

10 So, are these excerpts from  
11 timesheets from that time frame, or is it the full  
12 entry?

13 MR. BRODY: Well, the question -- I  
14 have the full -- I have the full entries.

15 THE COURT: Right. But are you  
16 questioning him on the full entry or excerpts from  
17 the entry?

18 MR. BRODY: It depends on --

19 THE COURT: Okay.

20 MR. BRODY: -- the entry. The  
21 question, you know, wasn't necessarily tied to a  
22 billing entry. The question was did he analyze  
23 approaches in the fall.

24 THE COURT: Yeah, I understand. I  
25 understood that. I wanted to get an understanding,

1     though, because we're talking about referencing  
2     billing. How did Mr. Conlan bill, does he remember,  
3     about that time frame. So with regard to entries,  
4     would you let us know if it's a singular entry that  
5     you're looking at, addressing. I think that's --

6                     MR. BRODY: Sure.

7                     THE COURT: -- within the confines of  
8     where we are right now, or is it an excerpt from a  
9     billing entry at that time frame.

10                    MR. BRODY: Sure.

11     BY MR. BRODY:

12                    Q.       Mr. Conlan, you -- just for the  
13     benefit of the Court, when you billed J&J for work  
14     on the talc litigation, you created -- and tell me  
15     if this is right, you created a single billing entry  
16     for each day, right?

17                    A.       Yes.

18                    Q.       Okay. So, basically, we call that --  
19     basically, it's a block billing, right?

20                    A.       Yes, I've heard it referred to as  
21     that, yes. Daily billing, block billing.

22                    Q.       Right. So if you do, you know, two  
23     things one day, you might describe two things and  
24     then put down seven hours?

25                    A.       Yeah, or add "analyze," because it

1 was a long day.

2 Q. I don't understand that.

3 A. Okay. If you spent seven or eight  
4 hours on a particular client's objectives in  
5 connection with the Imerys North America bankruptcy,  
6 the time report that you typed up yourself or  
7 transcribed, your assistant, might list a couple of  
8 items that day and then a generic catch-all, because  
9 you knew how much time you had spent that day  
10 thinking about those problems.

11 Q. I'm struggling with this idea of a  
12 generic catch-all to capture time spent thinking, as  
13 opposed to the time entry that -- I mean, is there a  
14 difference between that and a time entry that  
15 accurately reflects what you did?

16 A. I don't think so. By definition, if  
17 you're spending seven or eight hours, I at least  
18 typically didn't list the 15 things I did that day.  
19 I might list a few of them, and then have a more  
20 generic catch-all that describes the remaining 13.

21 Q. All right.

22 A. This is the hypothetical.

23 Q. So going back to the question I  
24 asked, which was not about billing records, I simply  
25 asked you whether you analyzed approaches to

1 diagnosis requirements for settlement participation  
2 in the fall of 2021.

3 A. I don't recall that. I will tell you  
4 what I do recall.

5 Q. Fair enough.

6 A. If you would like to hear it.

7 One of the questions, but I don't  
8 want to get into anything that's confidential, so  
9 you can stop me, I'm trying to self regulate here,  
10 is the question of whether or not a -- whether it  
11 was Imerys or whether it was J&J on a bolt-on, which  
12 was the spring of '21, not the autumn of '21,  
13 whether or not it could or should pay, offer to pay  
14 claimants where there was no diagnosis, or whether  
15 diagnosis should be a requirement in order to pay.

16 Q. Okay. And you were then exposed -- I  
17 mean, you participated in discussions of that issue  
18 with the J&J team, right?

19 A. I was exposed to discussions of that  
20 issue.

21 Q. Right. Privileged and confidential  
22 discussions of that issue, correct?

23 A. I would assume so.

24 Q. You mentioned Imerys TDP values; do  
25 you recall that?



1 A. Yes. No, the TDPs.

2 Q. Yes. The TDPs, exactly. And you  
3 were certainly part of the J&J team that analyzed  
4 those Imerys TDPs, correct?

5 A. I was exposed to the TDPs. I wasn't  
6 the drafter of the TDPs. Again, not my expertise.

7 THE COURT: For our record, what is  
8 TDP?

9 THE WITNESS: Trust distribution  
10 procedure.

11 BY MR. BRODY:

12 Q. And you were aware the trust  
13 distribution procedures come with -- they come with  
14 claim values, right?

15 A. Yes.

16 Q. And one of the things that happened  
17 in those discussions, again, without revealing any  
18 of the substance, is the J&J team evaluated  
19 arguments for and against the validity of the TDPs  
20 in the Imerys plan, correct?

21 A. I don't recall it that way. The way  
22 I recall it, which was typical of most bankruptcy  
23 cases, is you have an agreement with the -- a group  
24 of claimants, the tort claimants committee, and the  
25 TDPs get drafted together because there is agreement

1 between the tort claimants committee and the debtor,  
2 between the tort claimants committee and J&J, and  
3 how you're going to implement that, the trust  
4 distribution procedure is a common effort.

5 Q. But if one party proposes TDPs that  
6 another party, somebody like a J&J, thinks are  
7 inflated, or maybe thinks are too low, that party,  
8 then, is going to engage in, and you were privy to,  
9 analysis of TDPs proposed as part of the Imerys  
10 plan, including J&J's arguments as to the accuracy,  
11 validity, feasibility of the those TDPs, correct?

12 A. I'm sure there was back and forth on  
13 the drafting of the TDPs. I'm sure I was exposed to  
14 it. I don't recall it.

15 Q. It was extensive, wasn't it?

16 A. It always is, so I assume it was.

17 Q. All right. And you were -- you were  
18 on -- you got every meeting invite, didn't you, for  
19 the -- for the --

20 A. I don't know if I got every meeting  
21 invite, but I got a lot.

22 MR. POLLOCK: Objection. How can he  
23 conceivably know how many meeting invites there were  
24 and whether he was on them. I don't have any  
25 records to show how many meeting invites there were.

1 THE COURT: Well, Mr. Conlan did, I  
2 think, answer the question with regard to whether he  
3 knew or he didn't know whether or not he was  
4 invited. If he was invited, he went to those. If  
5 he could attend, he was there.

6 MR. POLLOCK: I agree, but Mr. Brody  
7 then says, You were invited to all of them.

8 [Overtalking]

9 THE COURT: Do you know if you were  
10 invited to all of those meetings?

11 THE WITNESS: I don't know.

12 THE COURT: Okay.

13 BY MR. BRODY:

14 Q. But you were invited to a lot of  
15 them?

16 A. I was invited to a lot of them.

17 Q. And you joined a lot of them, didn't  
18 you?

19 A. I did. They were all-hands. It's an  
20 all-hands approach.

21 Q. Right. And so you were -- you were  
22 exposed -- I think as you said, there were different  
23 people with different expertise on those calls and  
24 meetings?

25 A. That's right.

1           Q.           So you were exposed to the thinking  
2 of the people with every single different discipline  
3 of expertise?

4           A.           Correct.

5           Q.           Sticking with the Imerys bankruptcy,  
6 you analyzed the strength of estimates of numbers of  
7 future claimants, didn't you?

8                       MR. POLLOCK: Again, Your Honor, I  
9 want to have a standing request. If he's going to  
10 read excerpts from a timesheet, I want the entire  
11 excerpt read into the record. I want to know  
12 exactly what the billing statement is.

13                      Because if we're going to cherry-pick  
14 this little clause here and that little clause  
15 there, it -- I don't know how the witness answers  
16 that that's what he focused on, because to me -- the  
17 narrative always is, You had these discussions, is  
18 that what you did, but it may well be it was part of  
19 a whole series of things. I don't know, and we  
20 don't know, and you don't know.

21                      THE COURT: Any thoughts, Mr. Brody?

22                      MR. BRODY: Again, I'm asking -- I'm  
23 asking for testimony. And the question was, did he  
24 -- did he do that analysis as outside counsel for  
25 J&J.

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1 THE COURT: At what time frame?

2 MR. BRODY: During the Imerys

3 bankruptcy in the spring of 2021.

4 THE COURT: Okay.

5 MR. POLLOCK: But it's not just --  
6 he's not just asking for testimony. He's arguing by  
7 saying, Did you have discussion regarding these  
8 concepts. But the fact is, it goes on for pages.

9 THE COURT: Well, what -- let me  
10 explain what I believe --

11 MR. POLLOCK: Yes, sir.

12 THE COURT: -- Mr. Brody is doing.

13 Mr. Brody is looking to elicit  
14 testimony from Mr. Conlan. He obviously has records  
15 that he wants to receive -- have the Court receive  
16 in camera. What he then wants to do is, depending  
17 on the Court's decision with regard to those in  
18 cameras, then confront whether they are consistent,  
19 inconsistent with regard to the testimony.

20 So I'm going to permit Mr. Brody to  
21 do that.

22 MR. POLLOCK: Understood.

23 THE COURT: So, I'm not delving into  
24 strategy, but it's clear as day to both Judge Singh  
25 and I that's what's going on here.

1 Am I correct?

2 MR. BRODY: You are correct.

3 THE COURT: Okay.

4 MR. BRODY: Yes.

5 THE COURT: So even someone on my  
6 level, I'm not the sharpest knife in the drawer,  
7 Mr. Brody, I can understand that.

8 MR. BRODY: I'm not -- I'm not going  
9 to comment, Your Honor. I think --

10 THE COURT: That's my self-effacing  
11 comment.

12 MR. BRODY: I -- I think you're -- I  
13 think you're doing fine.

14 THE COURT: Okay.

15 BY MR. BRODY:

16 Q. So, the question, Mr. Conlan, was:  
17 Did you, in the spring of 2021, during the pendency  
18 of the Imerys bankruptcy, engaged in the -- engaged  
19 in analysis of the strength of claims from future  
20 claimants? Right?

21 A. I don't know how to answer that  
22 without explaining what was going on, and that may  
23 result in me saying things you don't want me to say.

24 Q. Well, at that time --

25 THE COURT: Can you break the

1 question down?

2 BY MR. BRODY:

3 Q. Let me ask you this: At that time,  
4 J&J was, internally, in March of 2021, working on a  
5 proposed term sheet, right?

6 A. In what particular month is this?

7 Q. March of 2021.

8 A. I remember the 4.2 bolt-on was in the  
9 spring, so that would be consistent with that time  
10 frame.

11 Q. And J&J was working on a term sheet,  
12 correct?

13 A. I don't remember precisely, but that  
14 would be consistent with that.

15 Q. And you were, around that time,  
16 actively engaged on J&J's behalf in negotiations  
17 with the -- with counsel for the future claimants in  
18 the Imerys bankruptcy, right?

19 A. Yes, I do recall that.

20 Q. Yes. During that time period,  
21 correct?

22 A. Yes.

23 Q. And in connection with that, or  
24 otherwise, you engaged in analysis of the strength  
25 of claims from future claimants in the Imerys

1 bankruptcy, didn't you?

2 A. I think analysis is overstated, if I  
3 may. In virtually every situation I've ever been  
4 involved in, the futures reps experts come up with  
5 numbers like this. The current claimants  
6 representatives come up with numbers like this,  
7 because there's a bit of a -- conflict is the wrong  
8 word, but the currents don't want to preserve a lot  
9 for futures, the futures want to make sure that  
10 their claimants in the future get the same as  
11 currents got in the past. And so it is a battle of  
12 experts and, frankly, exaggeration often has been my  
13 experience.

14 So, the idea that I can -- that I can  
15 analyze whether the futures reps experts are going  
16 too high, I don't have the underlying ability to do  
17 that, but my experience is they typically do go too  
18 high and the currents go too low.

19 Q. And you were a part of privileged and  
20 confidential discussions of arguments that J&J  
21 developed related to whether the estimates were too  
22 high or too low, right?

23 A. I don't recall that. I will note  
24 that you can't confirm a plan and get a channeling  
25 injunction unless the futures rep says yes, for



1       whatever his or her reasons are. So it's not like  
2       -- it's not a litigation and a battle. You either  
3       persuade them or you don't.

4               Q.       And one of the things you were trying  
5       to do was persuade the futures rep that it would be  
6       a good idea to participate in the deal?

7               A.       Yes.

8               Q.       And in connection with that, you had  
9       privileged and confidential discussions with  
10      Mr. Haas and others at Johnson & Johnson, correct?

11              A.       About what the futures rep said to me  
12      and what I would say to them, yes.

13              Q.       And about -- about how the company  
14      wanted to respond to positions that the futures rep  
15      was taking, right?

16              A.       I would assume so. I don't recall  
17      that exactly.

18              Q.       You -- you communicated with Mr. Haas  
19      in multiple ways. You communicated with Mr. Haas by  
20      email, right?

21              A.       I'm sure I did.

22              Q.       You communicated with Mr. Haas on the  
23      phone?

24              A.       I'm sure I did.

25              Q.       You met with him in person?

1           A.           Occasionally. It was COVID.

2           Q.           Yeah. And we were -- you know,  
3           Mr. Braunruether -- by the way, Mr. Braunruether had  
4           basically Mr. Haas' job before he had his current  
5           job, even though the titles may have been a little  
6           different, right?

7           A.           Yes, right.

8           Q.           Mr. Braunruether retired, I believe,  
9           end of February, March 1st, 2021. Is that  
10          consistent with your recollection?

11          A.           That sounds about right.

12          Q.           Right. And so, from that point  
13          forward, when you needed to have a strategy  
14          discussion with somebody at J&J, you typically  
15          reached out to Mr. Haas, didn't you?

16          A.           Again, it was a grouping of people.  
17          I would reach out to Mr. Haas. But occasionally, I  
18          would reach out to someone at Weil. Occasionally, I  
19          would reach out to Mr. Stengel. Occasionally, I  
20          would reach out to Mr. Murdica. Occasionally, I  
21          would reach out, when it was appropriate, to counsel  
22          to the tort claimants committee. All of those  
23          things.

24          Q.           Right. And you bring up the tort  
25          claimants committee. You engaged on J&J's behalf in

1 discussions with at least Natalie Ramsey, counsel to  
2 the tort claimants committee in the Imerys  
3 bankruptcy, correct?

4 A. Yes.

5 Q. And when you were doing that, you  
6 were -- I mean, you -- you were communicating then  
7 on the back end with Mr. Haas about those  
8 discussions that you were having, correct?

9 A. Yes.

10 Q. So --

11 A. Mr. Haas or one of his -- one of the  
12 people in his law department.

13 Q. Okay. Like Mr. White?

14 A. For example, yes.

15 Q. Mr. Kim?

16 A. Yes.

17 Q. And you were doing that in order to,  
18 you know, develop, Okay, what's the strategy, what's  
19 next in terms of our contact with, whether it's the  
20 futures rep, counsel to the TCC, as to how are we  
21 going to get our deal done?

22 A. How are we going to get them to yes.

23 Q. Yes. How are we going to get them to  
24 yes. But not just get them to yes; get them to yes  
25 at a number and within a structure that works for

1 J&J, right?

2 A. At least the latter. The numbers  
3 were not my area.

4 Q. Right. But you -- you couldn't just,  
5 you know, get them to yes at any old number. You  
6 had to -- the idea was, how do we get them to yes at  
7 a number that is going to be acceptable to J&J,  
8 right?

9 A. That was Mr. Murdica's area. What  
10 J&J would find acceptable was Mr. Murdica's area.

11 Q. And you and Mr. Murdica, I believe,  
12 were sort of the -- sort of the one-two negotiating  
13 team for J&J. You two were the two who were out  
14 there having the discussions, right?

15 A. No, I don't think I was the  
16 negotiating team, or part of a two-person  
17 negotiating team on the amount of money.

18 Q. I was -- I was talking as to the  
19 entire package, Are we going to get this deal done.  
20 It was you and Mr. Murdica, right?

21 A. Again, on the bankruptcy structuring  
22 side, like getting the futures rep over the issues  
23 that the futures rep was having on the difference  
24 between how futures would be treated and currents,  
25 that's a bankruptcy issue.

1           Q.           And as to that futures question, you  
2 mentioned that oftentimes discussions of things like  
3 value of futures claims, it comes down to a battle  
4 of experts, right? That was your phrase.

5           A.           Yes, but in the end, the futures rep  
6 says yes or they say no. It isn't like you beat  
7 them and their expert. They either say yes or no.

8           Q.           And even beyond a -- even beyond, you  
9 know, just a battle of experts, it's -- it's you,  
10 while you were outside counsel for Johnson &  
11 Johnson, while you were the company's lawyer, you  
12 were exposed to privileged and confidential analysis  
13 of exactly that, those futures values undertaken on  
14 a privileged and confidential basis by experts that  
15 J&J had retained as consultants to advise it  
16 internally, correct?

17          A.           I'm sure I was exposed to it.

18          Q.           All right. The -- you mentioned the  
19 TCC in the Imerys bankruptcy. That TCC had a  
20 negotiating subcommittee, didn't it?

21          A.           That's my recollection.

22          Q.           And Leigh O'Dell and Ted Meadows from  
23 Beasley Allen were on the TCC's negotiating  
24 subcommittee, weren't they?

25          A.           That doesn't surprise me. I don't

1 remember dealing with them. I remember dealing with  
2 counsel for the tort claimants committee. So the  
3 lawyers, who happen to be personal injury lawyers,  
4 weren't the bankruptcy lawyers, obviously. Those  
5 were lawyers from Willkie Farr, and also Natalie  
6 Ramsey.

7 Q. Right. And as we said, Ms. Ramsey  
8 was counsel to the TCC, correct?

9 A. Yes.

10 Q. You -- did you ever meet with  
11 Ms. Ramsey personally during those negotiations?

12 A. I'm sure I had. I did.

13 Q. Same with counsel for the futures  
14 rep?

15 A. Yes.

16 Q. I think you even played golf with the  
17 futures rep as part of your negotiating on J&J's  
18 behalf?

19 A. I'm not a golfer. I may have ridden  
20 in a golf cart while they were. I skied with them,  
21 for example. I did every year.

22 Q. Okay. Fair enough, fair enough.

23 In the process, you analyzed  
24 settlement dynamics and leverage points around  
25 voting on the Imerys plan, right?

1           A.           Yes.

2                       MR. POLLOCK: Same objection to the  
3 document completeness. If you're going to quote  
4 from the timesheet, I would like to see the  
5 timesheet or know if it's the entire narrative.

6                       THE COURT: Mr. Brody?

7                       MR. BRODY: Your Honor, I asked him  
8 if he analyzed settlement dynamics and leverage  
9 around voting on the plan, and he said yes.

10                      THE COURT: I would like a time  
11 frame. I mean, obviously, we're getting  
12 recollection from Mr. Conlan, so I'm going to  
13 overrule the objection, but at least for context for  
14 our record --

15                      MR. BRODY: Sure.

16                      THE COURT: -- providing us with a  
17 time frame.

18                      MR. BRODY: Sure.

19 BY MR. BRODY:

20                      Q.           Let me just ask you, what time period  
21 were you engaged in analysis of settlement dynamics  
22 surrounding voting on the Imerys plan?

23                      A.           My guess is that it would have been  
24 winter of 2021 and over into the spring of 2021,  
25 because as I recall, the Imerys bolt-on plan, which

1 didn't end up going through, was in the spring of  
2 '21. So that's how I think of that time period.

3 Q. Fair enough. And as you said, it  
4 didn't go through, correct?

5 A. Correct.

6 Q. And it became clear, I think, that  
7 negotiations had stalled by summer of '21?

8 A. Yes.

9 Q. And, at that time, you engaged in  
10 privileged and confidential communications with  
11 Mr. Haas evaluating alternatives to the Imerys  
12 bolt-on settlement, correct?

13 A. Yes.

14 Q. Now, ultimately, J&J took the path of  
15 filing the LTL bankruptcy petition in October of  
16 2021, correct?

17 A. That's my recollection.

18 Q. You were still a partner at Faegre  
19 Drinker at that time, correct?

20 A. I was.

21 Q. You looked at the -- without, again,  
22 disclosing the substance of anything, but you -- you  
23 analyzed that as a potential resolution, correct?

24 A. I think I'm --

25 Q. Just a yes or no.



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1 MR. POLLOCK: Can we get a time  
2 frame, Your Honor?

3 THE WITNESS: Yeah. Not before it  
4 was filed.

5 MR. POLLOCK: I would like a date. I  
6 would like a date of the time entry. I would like  
7 to know the date or time it was done.

8 THE COURT: Post October 2021.

9 MR. POLLOCK: The reason is -- well,  
10 I don't want to get in -- I don't want to put the  
11 argument -- [overtalking] I would like to know  
12 whether -- what this was being -- I would like to  
13 know when this is being discussed.

14 THE COURT: Why don't you rephrase  
15 the question, Mr. Brody.

16 MR. BRODY: Well, I think -- I think,  
17 if we have the record, the answer was not before  
18 October of 2021. So I think we do have the time  
19 frame.

20 THE WITNESS: May I explain? I want  
21 to be careful, but...

22 THE COURT: You need some  
23 elaboration?

24 THE WITNESS: Yes.

25 THE COURT: Okay. The Court will

1 permit Mr. Conlan to ask for elaboration.

2 THE WITNESS: And I will try to stick  
3 with what's public.

4 THE COURT: And I think after this  
5 question, we'll take a break.

6 MR. POLLOCK: Fair enough.

7 THE WITNESS: Jones Day created the  
8 Texas Two-Step, and it filed Bestwall, a Texas  
9 Two-Step, in North Carolina in 2017. Jones Day  
10 filed DBMP, a Texas Two-Step, in 2020 in North  
11 Carolina. Jones Day filed Aldrich Pump/Murray  
12 Boiler, a Texas Two-Step, also in 2020 in North  
13 Carolina.

14 I did discuss with J&J what I thought  
15 of what Jones Day had been doing in these Texas  
16 Two-Step cases in North Carolina and the viability  
17 of them, and the obstacles and the opportunities.

18 THE COURT: Let's take our break.  
19 We'll come back here in, let's say, 10 minutes.

20 MR. POLLOCK: Thank you, Your Honor.

21 THE COURT: 11:30. Thanks. We'll go  
22 off the record.

23 (A recess was taken.)

24 THE COURT: Please be seated. You  
25 may continue, Mr. Brody.

1 MR. BRODY: Thank you, Your Honor.

2 BY MR. BRODY:

3 Q. Mr. Conlan, before we broke, you  
4 indicated you were having discussions about what you  
5 referred to as the Texas Two-Step strategy in the  
6 summer of 2021. Do you recall that?

7 A. I don't think it's the summer of --  
8 I'm sorry, 2021?

9 Q. Yes.

10 A. Yes.

11 Q. You were actually having privileged  
12 and confidential discussions with Mr. Haas,  
13 Mr. White, and Mr. Kim long before that, weren't  
14 you?

15 A. With respect to what Jones Day had --  
16 was doing, had done, was in the process of doing in  
17 North Carolina, yes.

18 Q. With respect to the potential for a  
19 Texas Two-Step bankruptcy to serve as a potential  
20 resolution of J&J's talc liabilities, irrespective  
21 of whether Jones Day was involved, you were engaged  
22 in privileged and confidential discussions of that  
23 issue with J&J's senior inhouse counsel team as  
24 early as the fall of 2020, weren't you?

25 A. I don't recall it in the fall of

1 2020, but because the Texas Two-Steps were quite  
2 famous, and three of them were pending in North  
3 Carolina, all Jones Day cases, the inventor of the  
4 Texas Two-Step, I do recall J&J -- again, I'm trying  
5 to answer the question, but contained.

6 Q. Maybe -- maybe do it this way, then.  
7 I'll just ask you: Do you recall, without revealing  
8 any of the substance, having discussions about it  
9 with the inhouse counsel team at Johnson & Johnson  
10 well before summer of 2021?

11 MR. POLLOCK: Your Honor, just a  
12 quick point of clarification, which I've got to ask.  
13 Are you talking -- when you said "about it," is that  
14 about whether J&J --

15 THE COURT: Texas Two-Step.

16 MR. POLLOCK: -- is going to file in  
17 LTL, or about whether the Texas Two-Step in general?  
18 That point is critical, and without seeing the  
19 document and what was discussed, I really need to  
20 know. Was it about whether J&J was going to file in  
21 LTL or just about the Texas Two-Step in general?

22 THE COURT: Fair.

23 Mr. Brody, who is or what is "it"?

24 BY MR. BRODY:

25 Q. The Texas Two-Step as a resolution

1 for J&J.

2 A. Yes, as -- well, I would say in  
3 general, particularly, what do you think of what  
4 Greg Gordon is doing in North Carolina.

5 Q. And that was well before -- and you  
6 testified before the break, that was summer of 2021.  
7 You were involved in privileged and confidential  
8 discussions of that issue with Johnson & Johnson  
9 well before the summer of 2021, right?

10 A. To my recollection, and I'm filling  
11 in details here, is, at that point, the impression I  
12 had was Jones Day was pitching that.

13 Q. That wasn't my question.

14 A. Okay. I'm sorry.

15 Q. My question was whether you had  
16 discussions with senior leadership in the J&J law  
17 department about that issue prior to the summer of  
18 2021?

19 MR. POLLOCK: Again, that issue, Your  
20 Honor, I really need to know --

21 MR. BRODY: The Texas Two-Step.

22 MR. POLLOCK: -- whether J&J is going  
23 to file LTL, or whether is the Texas Two-Step in  
24 general. The distinction for me is critical.

25 THE WITNESS: About the Texas

1 Two-Step in general and what Greg Gordon was doing  
2 in North Carolina.

3 BY MR. BRODY:

4 Q. Prior to the summer of 2021, correct?

5 A. That wouldn't surprise me because --

6 Q. In fact, you -- you analyzed whether  
7 a, we'll call it, a Texas Two-Step bankruptcy filing  
8 was appropriate to resolve J&J's talc claims?

9 MR. POLLOCK: Your Honor, objection.  
10 If we're going to ask that question, I want to know  
11 what his analysis was, and asking again for  
12 attorney-client privileged communication. I know  
13 where they're driving. You can't have half the  
14 story. I need to hear the echo.

15 THE COURT: Mr. Brody?

16 MR. BRODY: Your Honor, he can  
17 clearly answer the question, did he engage in that  
18 analysis and did he discuss the analysis of the  
19 potential for a Texas Two-Step bankruptcy with  
20 inhouse counsel at J&J.

21 THE COURT: I'm going to overrule the  
22 objection. You can answer the question, Mr. Conlan.

23 And just for our record, I'm going to  
24 permit Mr. Conlan -- Mr. Conlan is being alleged to  
25 have done certain things here, and I want to permit

1 the record to reflect to the extent possible the  
2 ability for Mr. Conlan to address specifically what  
3 he is being alleged to have done. I'm not taking --

4 MR. POLLOCK: I understand.

5 THE COURT: I'm not making anybody's  
6 argument, Mr. Pollock and Mr. Brody, but I want to  
7 have the individual who is the subject of this,  
8 along with Mr. Birchfield, that opportunity to  
9 address specifically, now that we're honing in on  
10 it, Mr. Brody.

11 MR. BRODY: Of course.

12 THE COURT: All right. Mr. Conlan.

13 THE WITNESS: Yes. What I discussed  
14 was the weaknesses and the strengths of what Jones  
15 Day was doing in North Carolina and, in particular,  
16 reminding everyone that it doesn't work unless 75  
17 percent-plus of claimants vote yes; and that that is  
18 a difficult thing to achieve in the context of a  
19 solvent company bankruptcy.

20 BY MR. BRODY:

21 Q. And you participated in meetings,  
22 privileged and confidential discussions in meetings  
23 with Mr. Haas, Mr. White, and Mr. Kim on exactly  
24 that subject, correct?

25 A. Yes.

1 Q. And in the context, you also talked  
2 to them about structural optimization, didn't you?

3 A. And disaffiliation.

4 Q. Right. You were doing a soup-to-nuts  
5 privileged and confidential analysis of options that  
6 J&J might have to resolve its talc liabilities?

7 A. Yeah. Mechanisms and options.

8 Q. Correct. Throw everything on the  
9 table and let's talk about strengths and weaknesses  
10 of each one, right?

11 A. Correct.

12 Q. And in connection with structural  
13 optimization, that included comparisons between  
14 structural optimization and alternative options,  
15 correct?

16 A. Not to be difficult here, structural  
17 optimization and disaffiliation. Structural  
18 optimization alone doesn't get you to where you need  
19 to be. Structural optimization and disaffiliation.

20 Q. Right. So I understand what you're  
21 trying to say. My question -- and I'll add the  
22 words for you. That's fine.

23 You were engaging in analysis of the  
24 advantages and disadvantages of structural  
25 optimization and disaffiliation compared to other



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1 options that the company might have for resolution  
2 of its talc liabilities, correct?

3 A. Correct.

4 MR. POLLOCK: Can I get a point in  
5 time? Can I get a point in time when this occurred?

6 THE COURT: Mr. Brody?

7 MR. BRODY: And I'll -- that's --  
8 that's fine.

9 BY MR. BRODY:

10 Q. You were having these discussions  
11 with the inhouse team at Johnson & Johnson  
12 throughout the time that you were outside counsel to  
13 the company, correct?

14 A. Certainly, for a portion of the time,  
15 I was.

16 Q. You -- you raised the issue with  
17 Mr. Braunruether, as well, correct?

18 A. I assume I did.

19 Q. You raised the issue as early as  
20 August 2020, a month after you got to Faegre  
21 Drinker, correct?

22 A. That wouldn't surprise me to know  
23 that, yes.

24 Q. You raised it multiple additional  
25 times through the fall of 2020, specifically with

1 Mr. White, didn't you?

2 A. Yes.

3 Q. You raised it with Mr. White,  
4 Mr. Haas, Mr. Braunruether, Mr. Kim in the winter of  
5 2020-21, right?

6 A. I don't remember each specific  
7 instance, but I wouldn't be surprised by that, so.

8 Q. And then take Mr. Braunruether out of  
9 that group at the beginning of March of 2021, but  
10 through the spring and, as you've said, the summer  
11 of 2021, as well, right?

12 A. Yes.

13 Q. Into the -- into the -- and those  
14 discussions that you were having, those privileged  
15 and confidential discussions continued into the fall  
16 of 2021, didn't they?

17 A. Well, just to quibble on one point.  
18 What I was doing was referring to all the companies  
19 that didn't file bankruptcy and had achieved  
20 finality using structural optimization and  
21 disaffiliation.

22 Q. And you were comparing structural  
23 optimization and disaffiliation as an option for  
24 Johnson & Johnson to other options that were on the  
25 table and part of those privileged and confidential

1 discussions, correct?

2 A. Yes, including the fact that it  
3 doesn't require a vote of the claimants, so you  
4 don't need a yes vote, let alone 75 percent.

5 Q. So one of the things that those  
6 discussions included was conditions that would need  
7 to be addressed and satisfied for J&J to pursue  
8 structural optimization and disaffiliation as a  
9 resolution strategy, correct?

10 A. I would assume so, yes.

11 Q. How J&J's corporate structure might  
12 or might not lend itself to a resolution through  
13 structural optimization and disaffiliation, correct?

14 A. Not correct. Every single entity in  
15 a family of any group of companies can be  
16 structurally optimized.

17 Q. So, are you denying that you  
18 discussed with the inhouse counsel team at J&J  
19 issues related to J&J's corporate structure and how  
20 J&J's corporate structure might or might not lend  
21 itself to structural optimization and disaffiliation  
22 as a resolution for talc liabilities?

23 A. Incorrect. I described how you could  
24 structurally optimize all of the liable entities.  
25 The second part, where you said "or not," I don't

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1 remember an "or not." I don't recall saying you  
2 couldn't structurally optimize this entity, but you  
3 could this. The approach was you could structurally  
4 optimize any of the entities in the family.

5 Q. And so what you were doing is you  
6 were having discussions with the inhouse counsel  
7 team at Johnson & Johnson about -- let's just -- and  
8 I don't want to get into privileged information  
9 here --

10 A. I understand.

11 Q. -- but as to -- I'll leave off the  
12 "or not."

13 A. Okay.

14 Q. -- as to how J&J's corporate  
15 structure might lend itself to a structural  
16 optimization and disaffiliation resolution of its  
17 talc liabilities?

18 A. Yes. Correct.

19 Q. In connection with those discussions  
20 of structural optimization and disaffiliation and  
21 other options, the full panoply of resolution  
22 options that had to be considered, in that  
23 privileged and confidential context, you gained  
24 confidential information about how J&J felt the  
25 passage of time might impact the company's

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1 negotiating position, didn't you?

2 A. I don't recall that. How the passage  
3 of time would change --

4 Q. Correct.

5 A. -- the options?

6 Q. Correct.

7 A. I don't recall that.

8 MR. BRODY: We'll put a pin in that  
9 one, Your Honor.

10 MR. POLLOCK: Again, same objection,  
11 Judge. If I can't see the document, I can't  
12 question it.

13 BY MR. BRODY:

14 Q. You --

15 MR. BRODY: I mean, Your Honor,  
16 again, I -- I think Your Honor understands, you  
17 know, why I asked to put a pin in that. And this is  
18 a situation where this is cross-examination. I'm  
19 asking Mr. Conlan questions about what he did, what  
20 confidential information he was exposed to. He's  
21 just indicated, in this instance, he doesn't recall.  
22 The document would be to refresh his recollection or  
23 to impeach. It's not a situation where it is  
24 offering it.

25 Obviously, we would have to do that

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1 in an in camera context because we don't want to  
2 waive privilege as to the question.

3 But just in response to Mr. Pollock,  
4 I -- I think the Court does understand why I've  
5 asked that the Court to put a pin in that.

6 THE COURT: We do.

7 MR. BRODY: Thank you.

8 THE COURT: And Judge Singh and I,  
9 we're gong to come back. We're going to address  
10 that after our lunch break.

11 MR. BRODY: Okay. Thank you.

12 MR. POLLOCK: Several responses.

13 One, we're not at cross. There's been no  
14 demonstration that he, the witness, Mr. Conlan, is  
15 adverse to J&J. So there's been no hostility, he  
16 hasn't been lying under oath, and there is nothing  
17 here indicating he is adverse. He is a non-party.  
18 So I disagree with the starting point.

19 The second thing is, I think an hour  
20 and 20 minutes ago, even accounting for the  
21 10-minute break, we were to get to the point, I  
22 thought, which is what information specifically did  
23 Mr. Conlan share with Mr. Birchfield.

24 What J&J is doing is building an  
25 appellate record. The appellate record is he knew a

1 lot of stuff, Jim is an important guy. And I've  
2 stipulated, an hour and 35 minutes ago, he knew  
3 confidential information. Judge Porto, I was  
4 talking to you on the phone by video, and I told him  
5 right up front he knew confidential information.

6 If we're going to get this done, at  
7 some point, I think I'm entitled to know what  
8 specifically did Mr. Conlan know that he shared with  
9 Mr. Birchfield. We've now been at it for 20  
10 minutes, because that turned into an hour and 20  
11 minutes.

12 THE COURT: That was a Zoom. That  
13 was our Zoom conference.

14 MR. POLLOCK: Yes, sir.

15 MR. BRODY: Just in response,  
16 that's -- you know, the standard here is not, Is  
17 Mr. Conlan going to come in and confess on the  
18 witness stand I shared Eric Haas' --

19 THE COURT: You didn't ask him that  
20 question, yet, though, Mr. Brody.

21 MR. BRODY: Right, but that's -- but  
22 that's not the standard. I mean, I just -- I think  
23 it's important. In every fifth objection, we hear  
24 from Mr. Pollock that, you know, what we have to --  
25 what we have to get to with the standard for

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1     disqualification is, you know, basically, does --  
2     does Mr. Conlan confess that, you know, yes, I told  
3     Andy Birchfield about what Eric Haas said about the  
4     three conditions that would be -- that would have to  
5     occur if the company were to consider structural  
6     optimization as an option.

7                     That is, frankly, not the standard,  
8     and the reason it is not is because in situations  
9     where you have a lawyer like Mr. Conlan, who was  
10    outside counsel for Johnson & Johnson, who then gets  
11    into an arrangement where he's working with  
12    Mr. Birchfield and Beasley Allen, if both sides  
13    could simply, Beasley Allen and Mr. Conlan, say,  
14    Well, I deny that I ever shared any confidential  
15    information, you would never have a situation where  
16    there would be disqualification. Fortunately --

17                    THE COURT: We got it.

18                    MR. BRODY: Yeah. Fortunately, the  
19    rules don't require it.

20                    MR. POLLOCK: Your Honors, I couldn't  
21    disagree more strongly. That is exactly what the  
22    Supreme Court said in 188, 1 -- 549, exactly what  
23    they say in Trupos. You can't -- what they're  
24    doing, and this is why this whole thing should stop  
25    right now, is they're saying it must be imbued with,



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1 that inherently there's some discussion of. They  
2 have to show an actual disclosure.

3 THE COURT: What I meant was, I  
4 understand J&J's position and I understand Beasley's  
5 Allen --

6 MR. POLLOCK: Yes, Your Honor.

7 THE COURT: -- Beasley Allen's  
8 position.

9 MR. POLLOCK: Thank you, Your Honor.

10 THE COURT: Ultimately. But, you  
11 know, the Court has to make its determination. But  
12 I would like to get us -- now, I understand the  
13 foundation, you have to build a house with a  
14 foundation. But, Mr. Brody, not that I'm asking you  
15 to abbreviate your presentation here, but I think,  
16 you know, getting into the central issue here might  
17 be appropriate.

18 And it was an hour and 20 minutes ago  
19 because Mr. Brody said, you know, I'll give you 20  
20 minutes. So, I'm not rushing people, but I want to  
21 get, you know, right to the heart of the matter.

22 MR. BRODY: Yeah, and I apologize for  
23 the passage of time, Your Honor. It's -- but it is  
24 important, and it's, as you --

25 THE COURT: Well, that ties in with

1 your question to Mr. Conlan.

2 MR. BRODY: Yes.

3 THE COURT: So I get that.

4 MR. BRODY: Yes.

5 THE COURT: Okay.

6 BY MR. BRODY:

7 Q. You were exposed to confidential  
8 information about how J&J felt that the passage of  
9 time might impact trial risk associated with both  
10 ovarian cancer and mesothelioma claims, correct?

11 A. I'm struggling with "exposed." It's  
12 certainly the case that whenever you're estimating  
13 liabilities, for example, for a structural  
14 optimization, if the settlement trajectory shows up,  
15 or the judgments show up, you would say, Gee, we  
16 should have done it earlier before the trajectory  
17 moved up.

18 But that's not because someone told  
19 me that. That's just the reality of structural  
20 optimization and disaffiliation. Conversely, it  
21 could go the other way. The judgments could start  
22 to come in for the mass tort defendant, in which  
23 case the settlement models that the auditors, for  
24 example, used to come up with a number at which they  
25 could disaffiliate would go down. So the passage of

1 time changes the datapoints.

2 Q. And it might -- it sounds then to me  
3 like it might then be important to have a sense of  
4 whether you expected that would go up or go down in  
5 the future?

6 A. If you could see the future, I  
7 suppose.

8 Q. Yeah. And nobody can see the future,  
9 but we can certainly try to predict the future based  
10 on the knowledge, experience, and expertise we have  
11 with a certain mass tort, a certain type case, a  
12 certain area of the law, right?

13 MR. POLLOCK: Objection; vague and  
14 ambiguous, argumentative. I'm not sure what it goes  
15 to.

16 THE COURT: Did you understand the  
17 question, Mr. Conlan?

18 THE WITNESS: I didn't.

19 THE COURT: Okay.

20 BY MR. BRODY:

21 Q. We -- you said we can't be certain  
22 what the future is going to hold, but we can try to  
23 predict it, right?

24 A. You can try. But when you're doing  
25 structural optimization and disaffiliation and

1     you're saying this amount of money will cover  
2     current and future claims, you live with the record  
3     as it exists at that point.

4             Q.         And if you are thinking about the  
5     potential timing at which it might be advisable to  
6     pursue structural optimization and disaffiliation as  
7     a strategy, you would want to factor in what's my  
8     prediction about how the passage of time is going to  
9     impact the amount of money that would be necessary  
10    to fund the disaffiliated entity with, right?

11            A.         Yes, in theory, the trajectory.

12            Q.         Correct. And you were exposed to  
13    J&J's thinking on what that trajectory was going to  
14    look like in the future, right?

15            A.         I was exposed to J&J's thinking that  
16    they didn't think these claims were legitimate. I  
17    didn't -- I wasn't exposed to whether J&J thought it  
18    was going to win a trial, lose a trial. I just --  
19    that wasn't my area.

20            Q.         I'm not talking about, Okay, this  
21    case is going to trial on this date and here's how  
22    we think it's going to come out. You were exposed  
23    to J&J's inhouse counsels' thinking about how the  
24    passage of time would impact that trajectory during  
25    the course of the work that you did as outside

1 counsel for the company, correct?

2 A. I don't recall J&J or being exposed  
3 to J&J saying the trajectory is this way or that  
4 way, we want to do a structural optimization sooner  
5 or later, or -- I don't recall that. I have heard  
6 companies say that in my -- over my years, in  
7 deciding whether and when they want to do a  
8 structural optimization.

9 Q. So this is another instance where you  
10 would, on that point, not recalling it, you would  
11 want to see a document to refresh your recollection  
12 on that?

13 A. Sure.

14 Q. All right.

15 MR. BRODY: Another one, Your Honor.

16 MR. POLLOCK: Same objection.

17 BY MR. BRODY:

18 Q. So, you left the Faegre Drinker law  
19 firm in March of 2022 while the first LTL bankruptcy  
20 was pending, correct?

21 A. Yeah. I think it was March 1.

22 [LiveStream announcement.]

23 THE COURT: That's okay. That's just  
24 the LiveStream.

25 THE WITNESS: Yeah. Into February,

1 beginning of March.

2 BY MR. BRODY:

3 Q. All right. You started --

4 A. Of 2022.

5 Q. -- Legacy Liability Solutions,  
6 correct?

7 A. Correct.

8 Q. You are the CEO?

9 A. I am.

10 Q. I take it you will admit that ethical  
11 rules would have prohibited you from taking a job  
12 with Beasley Allen at that time to work on the talc  
13 litigation?

14 A. Yes.

15 Q. Whether you joined the firm as an  
16 attorney or in any other way, correct?

17 A. Correct.

18 Q. And you understand that you could not  
19 have been retained by Beasley Allen as an expert  
20 witness or a consultant on the talc litigation,  
21 right?

22 A. That would be my understanding, yes.

23 Q. No matter how deep your knowledge of  
24 structural optimization and disaffiliation, correct?

25 A. Correct.

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1           Q.           In any event, you started Legacy, and  
2           in that role you met with Andy Birchfield of Beasley  
3           Allen on May 2nd of last year, didn't you?

4           A.           That sounds right.

5           Q.           You didn't tell J&J you were going to  
6           meet with Mr. Birchfield, did you?

7           A.           Not specifically, but the background  
8           here is really important. On January 30, 2023, the  
9           Third Circuit Court of Appeals, in a 58-page  
10          decision by Justice Thomas Ambro, ruled quite  
11          publicly that the LTL bankruptcy filing was not in  
12          good faith, and ordered Judge Kaplan to dismiss it  
13          when they returned it to him.

14                       On February 2nd, 2023 --

15          Q.           Can I ask you to pause there. You're  
16          looking at a document. Can you tell me what you're  
17          looking at?

18          A.           I'm looking at the email proposal  
19          that we sent to Eric Haas and to the CEO of J&J,  
20          Mr. Duato, on February 2nd, 2023, before we ever met  
21          or engaged with Mr. Birchfield or anyone else.

22          Q.           Okay. So my question, Mr. Conlan,  
23          respectfully, was you didn't tell J&J that you were  
24          going to meet with Mr. Birchfield before you met  
25          with him on May 2nd, did you?

1           A.           That's what I'm responding to.  
2       Paragraph 6 of this email to Mr. Haas and Mr. Duato  
3       says: Legacy reserves the right, in its discretion,  
4       to negotiate settlements with interested asbestos-  
5       plaintiff law firms of some or all of the pending  
6       claims filed by such firms, all such settlements to  
7       become effective at closing of the Legacy proposal.

8                       That was an email sent at, well,  
9       almost 9 o'clock in the evening on February 1. It's  
10      a February 2 proposal. It's to Mr. Haas and it's to  
11      the CEO of J&J, Mr. Joaquin Duato. And that last  
12      part is paragraph 6.

13                      So, no, I don't think your question  
14      is accurate. Your question is not accurate.

15           Q.           So your testimony is, because you had  
16      a paragraph 6 in a February email that said Legacy  
17      reserves the right, that you -- yeah, that if its  
18      proposal were accepted, that that somehow was a  
19      disclosure that you were going to meet with  
20      Mr. Birchfield on May 2nd? I'm having trouble  
21      following the logic here.

22           A.           Yeah. What I'm saying is, on  
23      February 22nd, 2023, we send the first proposal to  
24      Mr. Haas and Mr. Duato in which we lay out what a  
25      Legacy proposal would look like, and in the final



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1 paragraph of that letter, we say, "We reserve the  
2 right to meet with." In other words, we're telling  
3 you we may meet with --

4 Q. If the proposal is accepted?

5 A. No, not necessarily.

6 Q. Right?

7 A. No, it doesn't -- it doesn't work  
8 like that. Structural optimization and  
9 disaffiliation is a process.

10 Q. If the proposal is accepted by J&J?

11 MR. POLLOCK: Objection, Your Honor;  
12 argumentative, asked and answered, and, frankly,  
13 incorrect.

14 THE COURT: Well, I want some clarity  
15 with regard to -- you've asked Mr. Conlan questions,  
16 Mr. Conlan responded. So what are you now  
17 addressing to Mr. Conlan, I guess in reply,  
18 Mr. Brody?

19 MR. BRODY: I'm asking him if it's  
20 his position that paragraph 6 that he is reading  
21 from, and I would love to get a copy of what he's  
22 reading from because I don't --

23 THE COURT: Well, we all have --

24 THE WITNESS: Your client has a copy  
25 of it and the CEO of your client --

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1 THE COURT: What's the exhibit number  
2 for that?

3 MR. BRODY: It's not in the record.  
4 This is -- Mr. Conlan says the record is closed --  
5 or Mr. Pollock says the record is closed, but now  
6 he's having witnesses bring documents in.

7 THE COURT: I thought this was part  
8 of what was in our books.

9 MR. POLLOCK: No, Your Honor, it's  
10 not, but the -- I was going to mark this as P-3 for  
11 identification. I did not intend to introduce it  
12 into the record. I was advised of the document two  
13 days ago, and Mr. Conlan has raised the issue.

14 But for Mr. Brody to now argue that  
15 the record is closed is laughable, given the fact  
16 that he is reading for hours from transcripts  
17 regarding timesheets. So I think that is -- that  
18 ship has sailed, apparently.

19 If the Court would like a copy, I  
20 have a copy. But again, I was only planning to mark  
21 it for identification purposes.

22 THE COURT: I don't need to see it  
23 because Mr. Brody asked Mr. Conlan. At least at  
24 this point, I don't think we need to see it.  
25 Mr. Brody asked Mr. Conlan what was he referring to.

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1 MR. POLLOCK: So the Court does not  
2 want a copy?

3 THE COURT: Not at this point, no.

4 MR. POLLOCK: Yes, Your Honor.

5 BY MR. BRODY:

6 Q. So, Mr. Conlan, I'm -- I'm really,  
7 now having looked at the document, I'm struggling  
8 even more with this idea that somehow that paragraph  
9 6 was you telling J&J that you were going to meet  
10 with Mr. Birchfield on May 2nd of 2023. And I'll  
11 tell you why I'm confused, and you can tell me if I  
12 shouldn't be.

13 A. Okay.

14 Q. All right? Because what you have  
15 brought with you today is a letter on Legacy  
16 Liability Solutions letterhead, dated February 2nd,  
17 2023, which says, "This is a proposal for Agreement  
18 between Legacy Liability Solutions and Johnson &  
19 Johnson. Legacy and J&J will agree as follows."

20 Are you with me so far?

21 A. I am.

22 Q. And then there are six parts to it,  
23 right?

24 A. Yes.

25 Q. So, if J&J agrees, you'll enter into

1 a transaction, a structural optimization and  
2 disaffiliation transaction with J&J.

3 Are you still with me?

4 A. I am.

5 Q. And as part of that, after J&J funds  
6 and disaffiliates the entity that is acquired by  
7 Legacy, you're proposing that Legacy, then, will  
8 reserve the right, in its discretion, to negotiate  
9 settlements with interested plaintiff law firm of  
10 some or all pending claims filed by those firms.

11 A. No. During and after closing is what  
12 it says in paragraph 6. And what I was responding  
13 to is the idea that J&J had no idea, was not on  
14 notice, was surprised, isn't consistent with the  
15 written record.

16 Q. And J&J explicitly rejected your  
17 proposal, correct?

18 A. No. We got no response. No "yes,"  
19 no "no," no "maybe." No confidentiality objection.  
20 Nothing.

21 Q. So your position is that paragraph 6  
22 was notice that you were -- you were going to go  
23 out -- you, J&J's former lawyer, were going to go  
24 out and meet with Mr. Birchfield, even if J&J did  
25 not accept your proposal, correct?

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1           A.           There's no mention of Mr. Birchfield  
2           in that letter.

3           Q.           I agree.

4           A.           The concept is, we're once again,  
5           we're telling you how this works, the Third Circuit  
6           has just told you no more on the bankruptcy, and so  
7           we're offering a solution that didn't require a  
8           vote, doesn't require a bankruptcy. We're telling  
9           you how the solution works. And in paragraph 6,  
10          we're referencing the fact that in doing this with  
11          you -- and it won't happen over night. It's not a  
12          quick transaction -- that we reserve the right to  
13          engage with plaintiffs' counsel to understand, for  
14          example, the size of the risk that we would be  
15          taking.

16          Q.           So what it -- what it says is J&J --  
17          Legacy and J&J will agree. This is your proposal,  
18          right?

19          A.           Uh-huh.

20          Q.           And the proposal is, "Legacy and J&J  
21          will agree as follows," right?

22          A.           In the ultimate transaction, the  
23          way --

24          Q.           I just -- my question --

25          A.           Okay.

1 Q. -- was different. My question was,  
2 you made a proposal, and in your proposal, you  
3 proposed that "Legacy and J&J will agree as  
4 follows," correct?

5 A. Correct, over --

6 Q. And -- and you proposed that J&J and  
7 Legacy would agree to six things, didn't you? I'm  
8 just reading the letter.

9 A. You have to understand that I --

10 Q. There's a -- there's a colon.

11 A. That is not the way a structural  
12 optimization and disaffiliation works.

13 Q. That wasn't my question, Mr. Conlan.  
14 My question was, you sent -- you sent a letter to  
15 Joaquin Duato and Eric Haas, and the letter proposes  
16 that Legacy and J&J agree to six things, correct?

17 A. We were outlining how a structural  
18 optimization and disaffiliation would work.

19 Q. It says, "This is a proposal for  
20 Agreement between Legacy Liability Solutions and  
21 Johnson & Johnson. Legacy and J&J will agree as  
22 follows," colon. Correct?

23 A. Yes, that's what this says.

24 Q. And then there were six -- six things  
25 listed there, right?

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1 A. Yes.

2 Q. And J&J didn't agree with it, did  
3 they?

4 A. They didn't say anything in response  
5 to it.

6 Q. Right. They didn't agree, did they?

7 MR. POLLOCK: Objection.

8 THE WITNESS: They didn't say  
9 anything in response to it.

10 THE COURT: Overruled.

11 BY MR. BRODY:

12 Q. Do you -- do you often, in entering  
13 into a business transaction with somebody, send them  
14 a proposal that they agree to something, and if you  
15 don't hear back from them treat that as agreement?

16 A. No.

17 Q. J&J didn't agree to any of that, did  
18 they?

19 A. Or disagree, or object. Silence.

20 Q. There was -- there was no -- come on,  
21 Mr. Conlan. There was no agreement.

22 MR. POLLOCK: Objection;  
23 argumentative, Your Honor. Asked and answered.

24 THE COURT: Yeah, I think we -- well,  
25 it's repetitive. I think we had an answer from

1 Mr. Conlan.

2 MR. BRODY: Fair enough, Your Honor.

3 Fair enough.

4 BY MR. BRODY:

5 Q. So, I will say, you know, we haven't  
6 heard -- we have done a lot of briefing on this. We  
7 -- you, I think, submitted three different -- two  
8 certifications and one declaration. Maybe the first  
9 declaration and the first certification were the  
10 same, but two different submissions in the state  
11 court, a submission in the federal court.

12 You didn't mention this as the  
13 purported justification for going to Mr. Birchfield,  
14 did you?

15 A. Until I sat here and listened to the  
16 testimony on March 25 about the shock and horror of  
17 learning that late -- much later that we would talk  
18 with plaintiffs' counsel in order to size it, I  
19 didn't think it was relevant.

20 Q. And all of a sudden, a proposal that  
21 said J&J and Legacy will agree to these six things  
22 that J&J never agreed to was an indication that --  
23 that a former lawyer was going to go talk to  
24 plaintiffs' counsel in the talc litigation?

25 MR. POLLOCK: Objection;



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1 argumentative, asked and answered for the fourth  
2 time.

3 THE COURT: Well, it was -- it was  
4 asked. I don't know if necessarily it was  
5 argumentative. I'll permit the question in terms of  
6 finality.

7 Are you able to answer that question,  
8 Mr. Conlan?

9 THE WITNESS: Could you repeat it?

10 MR. BRODY: Sure.

11 BY MR. BRODY:

12 Q. I'm just -- I'm just asking -- it's  
13 -- it's -- so, all of a sudden -- I guess I'm just  
14 going to -- I'm just going to leave it at this.

15 Your purported justification for not  
16 -- first of all, you didn't tell J&J that you were  
17 going to meet with Mr. Birchfield on May 2nd; we  
18 know that, right?

19 A. Correct.

20 Q. Correct. But your purported excuse,  
21 justification, I guess, for that is that you sent a  
22 six-item proposal to J&J in February of last year,  
23 that they did not agree to, that should have told  
24 them that their former on the talc litigation was  
25 going to go out and meet with plaintiffs' counsel in

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1 the talc litigation?

2 MR. POLLOCK: Objection.

3 BY MR. BRODY:

4 Q. That's -- that's the excuse?

5 MR. POLLOCK: Objection.

6 THE COURT: Basis of your objection?

7 MR. POLLOCK: He needs no excuse.

8 The fact is, he's business man at this point, so  
9 what is the -- if there's an allegation that he had  
10 some --

11 THE COURT: I'll strike "excuse." We  
12 don't have a jury here. It's the justification,  
13 that that letter was your -- and Mr. Brody's  
14 question was that was his --

15 THE WITNESS: I wouldn't say it was a  
16 justification. It was letting them know that this  
17 was a possibility.

18 BY MR. BRODY:

19 Q. You didn't ask J&J for a waiver.

20 A. Is that a question?

21 Q. Yeah.

22 A. Yeah. I don't think a waiver would  
23 have even made sense. One, we're not averse. It's  
24 an offer. They get to say no. Number one.

25 Q. They never said yes to your February

1 2nd --

2 MR. POLLOCK: Your Honor, Your Honor,  
3 he's still answering the question. Mr. Brody is  
4 cutting him off.

5 MR. BRODY: Fair enough. I  
6 apologize.

7 MR. POLLOCK: Let him answer, sir.

8 THE COURT: I agree. So let  
9 Mr. Conlan finish his response.

10 THE WITNESS: It's not adverse. They  
11 get to say no. It's a consensual transaction.  
12 Number one.

13 Number two, I'm not a practicing  
14 lawyer. I'm here on behalf of Legacy offering a  
15 consensual transaction to which they get to say no.  
16 And if they say no, nothing happens.

17 BY MR. BRODY:

18 Q. I take it you would agree with me  
19 that your obligations to your clients, from the time  
20 you were practicing law, do not end simply because  
21 you have stopped practicing law?

22 A. I agree that my obligations as a  
23 former practicing lawyer include not to share  
24 confidential information or to use confidential  
25 information.

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1           Q.           And they go -- they go further than  
2           that. You have a fiduciary duty to your former  
3           clients, as well. You understand that, right?

4           A.           I believe I complied with each of my  
5           ongoing responsibilities as a former lawyer.

6           Q.           All right. Well, let's talk about  
7           that a little more.

8                        You have never, at any point in time,  
9           gotten a waiver from Johnson & Johnson to  
10          communicate with Mr. Birchfield or anyone else from  
11          Beasley Allen about the talc litigation, right?

12          A.           It wouldn't even have made any sense  
13          to me to ask for a waiver.

14          Q.           So you didn't ask?

15          A.           I did not.

16          Q.           And you never got one?

17          A.           Because I never asked for one. It  
18          wouldn't have made any sense for me to ask for one.

19          Q.           And after this May 2nd meeting, you  
20          exchanged communications, written communications  
21          with Mr. Birchfield and other members of the Beasley  
22          Allen law firm, correct?

23          A.           Written communications? We  
24          communicated, yes, and I'm sure some of it was in  
25          writing.

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1           Q.       By talking -- did you talk -- did you  
2 talk on the phone?

3           A.       Yes, but --

4           Q.       You had -- you had additional --

5                   MR. POLLOCK: Can he complete -- Your  
6 Honor.

7           Q.       -- in person meetings --

8                   MR. POLLOCK: Mr. Brody, please let  
9 him answer the question.

10                  THE COURT: Well --

11                  MR. POLLOCK: He's answering the  
12 question.

13                  THE COURT: We're all not helping  
14 ourselves, so. But he asked the question. Please  
15 let Mr. Conlan -- as I indicated on the 25th, let  
16 the witness provide a response.

17                  MR. BRODY: Sure.

18 BY MR. BRODY:

19           Q.       You -- you talked on the phone?

20           A.       It's important for context.

21                  MR. BRODY: Your Honor --

22                  THE COURT: Well, could you answer  
23 that question first.

24                  THE WITNESS: Yes.

25 BY MR. BRODY:

1 Q. All right. And you had additional  
2 in-person meetings, correct?

3 A. I'm sure we did.

4 Q. All right. You had a -- you had a  
5 meeting again two weeks later on May 16th of last  
6 year, right?

7 A. May I add this?

8 Q. I'd like to get an answer to my  
9 question.

10 THE COURT: You will have an  
11 opportunity.

12 THE WITNESS: Okay.

13 THE COURT: I'm sure Mr. Pollock is  
14 going to give you that opportunity.

15 THE WITNESS: I understand.

16 MR. POLLOCK: Just to be clear, Your  
17 Honor, the reason he is struggling is this occurs  
18 during the mediation privilege. Therefore, he is  
19 struggling to answer the question. That point has  
20 not been brought out.

21 THE COURT: Okay. But you're going  
22 to have an opportunity, Mr. Pollock.

23 MR. POLLOCK: Yes, Your Honor.

24 THE COURT: Thank you.

25 BY MR. BRODY:

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1           Q.           Yeah, and I -- I'm not asking you to  
2        reveal the substance of those communications because  
3        I understand that the plaintiffs steering committee  
4        has taken the position, and it has been recognized  
5        by Judge Schneider, that its communications with you  
6        during that time period are covered by the mediation  
7        privilege. So I don't want to -- I don't want you  
8        to talk about the substance of any of those  
9        communications --

10          A.           Okay.

11          Q.           -- because of their assertion of the  
12        mediation privilege. I'm just asking you: You had  
13        more meetings, right?

14          A.           Yes, but it wasn't with  
15        Mr. Birchfield alone. It was arranged by  
16        Mr. Molton.

17          Q.           It included Leigh O'Dell, correct?

18          A.           I believe Leigh O'Dell was there.

19          Q.           And the meetings included Ted Meadows  
20        from Beasley Allen, correct?

21          A.           I think so.

22          Q.           And just a yes or no, because Beasley  
23        Allen and the other lawyers on the plaintiffs  
24        steering committee in the MDL have asserted their  
25        mediation privilege claim, you received copies of

1 plaintiffs' counsels' analysis of claim values for  
2 the talc litigation, didn't you?

3 A. It wasn't just me at the meeting.  
4 Scott Gilbert was there. It is possible that there  
5 was communications coming from plaintiffs' counsel  
6 to us. Certainly there was ultimately the matrix,  
7 which came from the Beasley Allen firm.

8 Q. What you were trying to do, and in  
9 looking at all of these communications in engaging  
10 in this collaboration with Beasley Allen, was to  
11 position Legacy with Beasley Allen to get J&J to go  
12 not with its preferred resolution of talc  
13 liabilities through the LTL bankruptcy, but with  
14 what you referred to as the Legacy toggle, right?

15 MR. POLLOCK: Your Honor, objection  
16 to the word "collaboration," and second of all, that  
17 they were "working with." There's been no proof of  
18 either.

19 THE COURT: Thank you.

20 Mr. Brody, do you do you want to  
21 address that?

22 MR. BRODY: Sure. I -- I mean, I  
23 don't need to go much further than the quote from  
24 Mr. Pollock in the March 25th, page 83 of the  
25 transcript. "They were working together, yes," he



1 said.

2 THE COURT: So they were working  
3 together. How about that term?

4 MR. BRODY: They were working  
5 together.

6 THE COURT: Okay.

7 BY MR. BRODY:

8 Q. You were working -- what you were  
9 doing was working with Beasley Allen to try to  
10 position Legacy with Beasley Allen to get J&J to go  
11 not with its preferred resolution of the talc  
12 liabilities through the LTL bankruptcy, but with  
13 what you referred to as the Legacy toggle, right?

14 MR. POLLOCK: Objection, Your Honor.

15 THE COURT: And the basis of your  
16 objection, Mr. Pollock?

17 MR. POLLOCK: Because, again, the  
18 questions is loaded. The fact is, yes, they are in  
19 a mediation. Is that working with? They're having  
20 discussions. Is that working with? Is that  
21 conspiracy? Is that collaborating?

22 THE COURT: Well, I don't think it  
23 was established through Mr. Conlan's testimony that  
24 that was mediation.

25 MR. POLLOCK: I know, and that's what

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1 concerns me, because the lack of context is killing  
2 me here.

3 THE COURT: Well, why don't we -- why  
4 don't you preface -- was that your question? Why  
5 don't you preface, is that during -- was that during  
6 the mediation, Mr. Conlan?

7 THE WITNESS: I don't -- I don't know  
8 when the entire mediation is going on. I don't know  
9 the time span. The only -- we had a fairly limited  
10 participation from a timing perspective in the  
11 mediation.

12 THE COURT: So then your question --  
13 I'll overrule the objection, but -- so if I don't  
14 find that that's during the mediation --

15 MR. BRODY: Yes.

16 THE COURT: -- and that doesn't cover  
17 it --

18 BY MR. BRODY:

19 Q. What you were trying to do,  
20 Mr. Conlan, was position Legacy with Beasley Allen  
21 during the time you were working with them to get  
22 J&J to go not with its preferred resolution of talc  
23 liabilities through the LTL bankruptcy, but with  
24 what you referred to as the Legacy toggle, right?

25 A. No. What we were trying to do is

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1 size the liability as part of the deciding whether  
2 we wanted to take the talc-labile entities of J&J.  
3 We don't need the approval of the plaintiffs'  
4 lawyer. We don't need a yes vote. We don't need a  
5 no objection. We don't need any of that. The one  
6 yes we do need is from J&J.

7 Q. And you were trying to get a yes from  
8 J&J, correct?

9 A. Of course.

10 Q. And you were trying to get a yes from  
11 J&J even though you knew that the resolution J&J  
12 wanted was a planned confirmation in the LTL  
13 bankruptcy, correct?

14 A. Not correct. J&J, on January 30th,  
15 2023, was told by the Third Circuit Court of Appeals  
16 that the case had to be dismissed as lacking good  
17 faith. Another one was filed immediately in the  
18 wake of it and dismissed on July 28th.

19 What we were attempting to do is  
20 offer a path to J&J, if it chose it, to obtain the  
21 finality that it was seeking but never did obtain.

22 Q. And you were trying to do that before  
23 the bankruptcy was dismissed, weren't you?

24 A. Before the second bankruptcy was  
25 dismissed?

1 Q. Correct. Before the second  
2 bankruptcy was dismissed.

3 A. That's correct.

4 Q. At a time when you knew that J&J was  
5 trying to achieve plan confirmation in that  
6 bankruptcy proceeding, correct?

7 A. From public records, yes.

8 Q. Yes. And so you knew that what you  
9 were trying to get to was not what the company  
10 wanted at that point in time, right?

11 A. No. What I knew the company wanted  
12 was finality. It was trying to get to a 75 percent-  
13 plus vote, and it wasn't getting there, by public  
14 information.

15 Q. And so what you were doing was trying  
16 to position yourself to take advantage of that; is  
17 that fair?

18 A. Take advantage of it?

19 Q. And so if -- I mean, look, while the  
20 -- while the bankruptcy was pending, you understand  
21 that Mr. Birchfield, along with others, was trying  
22 to get the bankruptcy dismissed, right?

23 A. I was generally aware of what was  
24 being filed publicly. Some of the plaintiffs'  
25 lawyers were opposing it, some of them were

1 supporting it.

2 Q. Mr. Birchfield was opposing it,  
3 correct?

4 A. That's my understanding.

5 Q. You knew that. You were talking to  
6 him at the time, right?

7 A. Yes.

8 Q. Right. And you knew that  
9 Mr. Birchfield was opposed to J&J's preferred  
10 resolution, which was confirmation of the \$8.9  
11 billion bankruptcy plan in the LTL 2, right?

12 A. Yes.

13 Q. All right. And, at that time, you  
14 were trying to position yourself to engage in -- in  
15 what you called a Legacy toggle, right?

16 A. I don't remember -- the concept of a  
17 toggle is, J&J can say yes to this whenever it  
18 wants; and if it says yes, there's no bankruptcy.  
19 There just isn't one.

20 Q. Are you denying that you refer to  
21 this as the Legacy toggle?

22 A. No, I'm not denying that. Others use  
23 that word "toggle," which I think is kind of an  
24 unusual phrase, because it's not a plan of  
25 reorganization, it's not something that the

1 bankruptcy court approves; it's an offer, a  
2 consensual transaction to J&J that says would you  
3 like to do this.

4 Q. And you were -- you were trying to do  
5 that through the tort claimants committee that was  
6 appointed in the LTL bankruptcy, weren't you?

7 A. Trying to have that offer be made to  
8 J&J?

9 Q. Trying to work with the tort  
10 claimants committee to advance your Legacy toggle  
11 while J&J was seeking plan confirmation of it's \$8.9  
12 billion bankruptcy plan?

13 A. I just don't agree with the  
14 characterization. We were trying to size the  
15 liability as part of deciding whether we wanted to  
16 take the talc-labile entities, if J&J agreed to it.  
17 We were not seeking a yes vote from the claimants.  
18 We were not seeking to have them say no to J&J. We  
19 were offering a consensual alternative.

20 Q. You were pursuing an alternative that  
21 would have brought administrative and management  
22 fees to Legacy, if Legacy had handled it, correct?

23 A. Yes.

24 Q. The ability for Legacy to maintain  
25 any spread, if there happened to be a spread,

1 between the amount that the disaffiliated entity was  
2 funded with and the amount that the talc liabilities  
3 were ultimately resolved for, correct?

4 A. Not correct. One of the features --  
5 and, in fact, we offered this to J&J when we meet  
6 with them on September 11, 2023, after the second  
7 LTL bankruptcy is dismissed -- are mechanisms to  
8 allow J&J, in the wake of accepting our deal, to  
9 recapture through what we call adverse event cover,  
10 so that if the claims end up being less than what  
11 the auditors required, J&J can participate in that,  
12 so.

13 Q. And you'll still make money, right?

14 A. Yes.

15 Q. All right. And that's what you  
16 wanted. You wanted to make money?

17 A. Correct.

18 Q. If the plan had been confirmed in the  
19 bankruptcy, you wouldn't have made money, would you?

20 A. Correct.

21 Q. And if J&J doesn't go with the Legacy  
22 toggle, it doesn't make money, does it; that you  
23 don't make money, Legacy doesn't make money?

24 A. Correct. By the way, you said if it  
25 doesn't go with. There is no toggle. J&J -- LTL is

1 not in bankruptcy, so if LTL wanted to do a  
2 transaction -- sorry.

3 Should I answer?

4 THE COURT: I don't hear any  
5 objection, so yeah.

6 THE WITNESS: If LTL and J&J entered  
7 into the transaction today, there's no toggle. They  
8 would just enter into the transaction.

9 BY MR. BRODY:

10 Q. But you -- but you did refer to it as  
11 the Legacy toggle, right, during the bankruptcy?

12 A. I may have. I don't think I came up  
13 with that phrase, but...

14 Q. Who came up with that? Was that  
15 Mr. Birchfield that came up with that?

16 A. I think it may have been David  
17 Molton.

18 Q. All right. And toggle means we're  
19 switching. We're not going to go with what J&J  
20 wants, we're going to go with what Legacy wants?

21 A. No. I think what David Molten meant  
22 when he used the phrase "toggle," which is something  
23 Jessica Boelter from White & Case as J&J's counsel  
24 in the LTL case often used, and in other cases that  
25 we worked together on, is that J&J could take the



1 Legacy option, and if it did, the bankruptcy would  
2 just go away.

3 But if J&J didn't take the Legacy  
4 option, then the tort claimants would proceed with  
5 whatever they were going to do. Vote in favor, vote  
6 against, do whatever they were going to do. Confirm  
7 their own plan.

8 Q. During May of last year, while you  
9 were, unbeknownst to J&J, communicating with  
10 Mr. Birchfield, you reached out to Mr. Haas to  
11 propose this -- to try to get him to agree to  
12 discuss this Legacy toggle proposal with you, right?

13 A. Yeah, reaching out to Mr. Haas was a  
14 fairly continuous process. When you say "May," I'm  
15 trying to -- you're saying May of 2023?

16 Q. Correct.

17 A. Yeah, that wouldn't surprise me.

18 Q. And during the time that you were  
19 engaged in what the plaintiffs steering committee  
20 says are confidential privileged discussions with  
21 Mr. Birchfield, right?

22 A. Yes.

23 Q. You didn't tell Mr. Haas that you  
24 were talking to Mr. Birchfield, right?

25 A. I don't recall telling Mr. Haas that.

1 I didn't think I needed to.

2 Q. And you didn't?

3 A. And I didn't.

4 Q. He rejected your outreach, correct?

5 A. I don't think they -- I don't recall  
6 "rejected." They certainly didn't say yes.

7 Q. J&J was going through the LTL, was  
8 going through bankruptcy at that point in time,  
9 right?

10 A. Right.

11 Q. Now, ultimately, Judge Kaplan  
12 announced that he was dismissing the second LTL  
13 bankruptcy on July 28th of last year, right?

14 A. That sounds correct.

15 Q. You sent an email to Mr. Haas the  
16 same day, didn't you?

17 A. I think I did.

18 Q. And you were pitching structural  
19 optimization and disaffiliation with Legacy, right?

20 A. Again, yes.

21 Q. All right. You didn't tell him at  
22 that time, when you reached out to him, that you had  
23 been meeting with Mr. Birchfield and other lawyers  
24 from Beasley Allen since the beginning of May, did  
25 you?

1 A. I don't think I did, no.

2 Q. That you had been communicating with  
3 them throughout last year's LTL bankruptcy  
4 proceeding?

5 A. Again, when you say "LTL," LTL would  
6 later be called what's called LTL 1. The Third  
7 Circuit ordered its dismissal on January 30, 2023.

8 Q. I'm talking about last summer's  
9 mediation.

10 A. Yeah. Then Judge Kaplan finally  
11 dismisses it. And a few hours later, LTL files  
12 again. It's called LTL 2. That case is brief. It  
13 goes from, I don't know, April-May 2023 until  
14 July 28th, when Judge Kaplan dismisses it.

15 Q. And so if I can get an answer to my  
16 question.

17 A. Yes.

18 Q. You didn't tell Mr. Haas that you had  
19 been communicated with Mr. Birchfield and others  
20 from Beasley Allen throughout the pendency of the  
21 mediation that took place during the course of what  
22 you referred to as LTL 2, correct?

23 A. I don't think I did.

24 Q. All right. Now, you ultimately met  
25 with Mr. Haas on September 11th of last year, right?

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1 A. Yes.

2 Q. And it was you and Mr. Dachille?

3 A. Dachille, yes.

4 Q. Dachille. Apologies to Mr. Dachille.  
5 He is Legacy's chief investment officer?

6 A. He is.

7 Q. And you met with Duane Van Arsdale,  
8 J&J's treasurer, right?

9 A. Yes.

10 Q. Along with Mr. Haas and Mr. White,  
11 correct?

12 A. Correct.

13 Q. In the meeting, you did not reveal to  
14 them that you had been communicating with  
15 Mr. Birchfield and Beasley Allen, did you?

16 A. Again, don't -- I didn't reveal it  
17 during that meeting. Going all the way back to  
18 February 2nd, 2023, we, frankly, thought we put them  
19 on notice that as part of our model, we need to size  
20 the liabilities, but ultimately it's up to the  
21 auditors.

22 Q. And that's the February 2nd letter  
23 where you -- you proposed that J&J and Legacy agree  
24 to something, and J&J never responded and never said  
25 we agree?

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1 A. Or objected.

2 Q. Right. And it says the -- and that  
3 was just where you said "Legacy reserves the right  
4 to negotiate settlements with interested  
5 asbestos-plaintiff law firms," right?

6 A. Yeah.

7 Q. "To become effective at closing,"  
8 right?

9 A. Right.

10 Q. And is that -- and the closing that  
11 that's referring to is the signing of a definitive  
12 agreement, embodying the terms of the letter,  
13 correct?

14 A. No. It's the ultimate acquisition of  
15 the talc-labile entities after the auditors have  
16 concluded that they will disaffiliate the entities.  
17 That's when closing occurs. Closing is at the very  
18 end. It's not at the beginning.

19 Q. All right. So that we don't get too  
20 far off track here, I don't want us to go too far  
21 down the road.

22 A. I understand.

23 Q. But you didn't at that September 11th  
24 meeting tell Mr. Van Arsdale, Mr. Haas, or Mr. White  
25 that you had been meeting with Mr. Birchfield and

1 Beasley Allen lawyers for what was four months at  
2 that point in time, right?

3 A. On again, off again, that's right.

4 Q. Okay. To make sure it's clear --

5 A. They're not in bankruptcy anymore at  
6 that point.

7 Q. I didn't ask you whether they were in  
8 bankruptcy.

9 A. Okay. I'm just...

10 Q. So that's a yes, you didn't tell  
11 them?

12 A. Correct.

13 Q. All right. Following the meeting,  
14 Mr. Van Arsdale told you that -- told you and  
15 Mr. Dachille that J&J wasn't interested in your  
16 proposal, correct?

17 A. Well, he said more than that. But,  
18 yes. I think it's all attached as Exhibit 3 to  
19 Mr. Haas' affidavit.

20 Q. Right. J&J's third quarter earnings  
21 call was October 17th of last year, correct?

22 A. I don't remember that precisely, but  
23 that wouldn't surprise me in terms of the quarter.

24 Q. You were -- I mean, you were aware of  
25 it when it was going on, right?

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1           A.           I'm generally aware of quarterly  
2 earnings calls, yes.

3           Q.           Yeah. And you were aware of what  
4 Mr. Haas stated about the company's intentions with  
5 respect to its talc liabilities on that earnings  
6 call?

7           A.           I was told by others what Mr. Haas  
8 said during the call.

9           Q.           And then you reached out to Mr. Van  
10 Arsdale the very next day, didn't you?

11          A.           I don't remember the exact date, and  
12 it certainly wasn't because of the earnings call.

13          Q.           Open up the notebook you have in  
14 front of you and turn to tab 4.

15          A.           Okay.

16          Q.           You recognize that as an email you  
17 sent to Mr. Van Arsdale, correct?

18          A.           This is the one dated October 18th?

19          Q.           Correct.

20          A.           Yeah.

21          Q.           All right. And you wrote that,  
22 right?

23          A.           Yes.

24          Q.           All right. And what you said there  
25 was that you were -- "to further enhance our

1 solution... Legacy has the support of lead counsel  
2 for the OC" -- that's ovarian cancer, right?

3 A. Yes.

4 Q. -- "Claimants (including Andy  
5 Birchfield) for an MDL opt-in settlement matrix with  
6 Legacy that will require (and is expected to garner)  
7 a 95 percent opt-in of current OC Claimants."

8 Right?

9 A. Yes.

10 Q. And you indicated that Mr. Dachille  
11 and you and Mr. Birchfield were prepared to meet  
12 with Mr. Van Arsdale and his team in person to  
13 discuss the terms of the matrix, right?

14 A. Yes.

15 Q. As part of the Legacy proposal,  
16 correct?

17 A. Correct.

18 Q. And you were truthful with Mr. Van  
19 Arsdale in that email, right?

20 A. Yes.

21 Q. And you knew that Mr. Birchfield was  
22 ready, willing, and able to come in with you to talk  
23 about the settlement matrix, right?

24 A. Yes.

25 Q. And to talk about the resolution that



1 you were proposing, correct?

2 A. Right.

3 Q. Because you had already discussed  
4 that with Mr. Birchfield, right?

5 A. I wouldn't offer that he would come  
6 without confirming that he would come.

7 Q. Right. And he was okay with it,  
8 right?

9 MR. POLLOCK: Objection; okay with  
10 "it."

11 THE COURT: The matrix. And could  
12 you --

13 BY MR. BRODY:

14 Q. He was okay with -- he was okay with  
15 coming in with you to meet with J&J, right?

16 A. Yes, right.

17 Q. And I take it he probably -- he  
18 probably authorized you to say yes -- say -- I mean,  
19 I'm sure he authorized you to represent to J&J that  
20 he was willing to come in, right?

21 A. Yes.

22 Q. All right. Mr. Van Arsdale did not  
23 accept your offer, did he?

24 A. Mr. Van Arsdale I don't think  
25 responded. But one of the things that's important

1 to understand is the email immediately proceeding  
2 this --

3 Q. I'm sorry. There's no question.

4 The question was just what  
5 Mr. Arsdale -- Mr. Van Arsdale never -- he didn't  
6 accept your offer, did he?

7 MR. POLLOCK: Your Honor, again, we  
8 have allowed long narrative responses from Mr. Haas.  
9 Goose/gander should apply. If you want to do it  
10 step by step, we'll do it step by step.

11 THE COURT: Well, I'm waiting,  
12 really, for a response.

13 Did Mr. Van Arsdale ever respond?

14 THE WITNESS: Not to this email.

15 THE COURT: Okay.

16 MR. BRODY: All right.

17 BY MR. BRODY:

18 Q. So, he didn't accept your offer to  
19 come in with Mr. Birchfield; fair?

20 A. He didn't respond.

21 Q. He -- he didn't -- he didn't accept  
22 the offer; fair?

23 A. Or reject. He just didn't respond.

24 Q. All right. Two weeks later, you  
25 pitched this structural optimization and

1 disaffiliation idea in the media by writing a piece  
2 published by Bloomberg, didn't you?

3 A. Yes.

4 Q. And if you turn to tab 15 of your  
5 binder, that is the -- could you just confirm that  
6 is a copy of it?

7 THE COURT: And topically, again,  
8 Mr. Brody, why don't we finish with this line of  
9 questioning on this Bloomberg article, and then  
10 we'll take our lunch break.

11 MR. BRODY: Fair enough.

12 THE WITNESS: Yes.

13 BY MR. BRODY:

14 Q. You there?

15 A. I'm there.

16 Q. You wrote that, right?

17 A. I did.

18 Q. On the first page, it says, "Legacy  
19 Liability Solutions CEO James Conlan, former Sidley  
20 Austin restructuring chair, proposes an alternative  
21 to the Texas Two-Step that provides finality to  
22 companies and relief to injured plaintiffs," right?

23 A. Yes.

24 Q. No mention of the fact that you were  
25 a partner at Faegre Drinker, correct?

1 A. Not in this article, no.

2 Q. No mention of the fact that you  
3 represented J&J in the talc litigation, including in  
4 its analysis of bankruptcy as a settlement option,  
5 correct?

6 A. Just one clarification. You keep  
7 saying "in the talc litigation." It was only with  
8 respect to the bankruptcy issues. That was the  
9 Imerys North America bankruptcy, and then briefly in  
10 the LTL 1 bankruptcy. Not the talc litigation.

11 Q. Those -- those bank -- those  
12 bankruptcy --

13 A. You do it as a subcomponent part.

14 Q. Those bankruptcy proceedings were  
15 efforts to resolve the talc litigation, correct?

16 A. Yes.

17 Q. Including all of the pending claims  
18 here in Atlantic City, and all of the pending claims  
19 in the MDL in Trenton, correct?

20 A. Yes.

21 Q. All right. And you didn't disclose  
22 the fact that you had represented Johnson & Johnson  
23 in the talc matters -- I'll say "matters," if it  
24 makes it easier for you. You didn't disclose in  
25 this article that you had represented Johnson &

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1 Johnson in the talc matters as outside counsel, did  
2 you?

3 A. No.

4 Q. Were you trying to hide the fact that  
5 you had been a partner at Faegre Drinker?

6 A. No.

7 Q. That you had represented J&J in the  
8 talc litigation?

9 A. Was I trying to hide that fact?

10 Q. Right.

11 A. No.

12 Q. That you had done 1600 hours of work  
13 for the company on the talc matters?

14 A. Correct.

15 Q. You were not trying to hide it?

16 A. Correct, that -- that I had done 1600  
17 hours, no, I was not trying to hide the fact that I  
18 had done 1600 hours.

19 MR. BRODY: Your Honor, you indicated  
20 you wanted to break here.

21 THE COURT: Yes.

22 MR. POLLOCK: Before we break, can I  
23 just get an idea of how much longer we have to go,  
24 because I had hoped we would finish today. It  
25 sounds like we may not.

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1 MR. BRODY: I have very few  
2 additional questions for Mr. Conlan.

3 THE COURT: Okay.

4 MR. POLLOCK: Thank you.

5 THE COURT: Thank you. Are we going  
6 to be able to get to Mr. Birchfield today?

7 MR. BRODY: Oh, absolutely.  
8 Absolutely. I'll cut down and really see if we  
9 can -- I mean, it depends on what Mr. Pollock has  
10 for Mr. Conlan, but --

11 THE COURT: Sure.

12 MR. BRODY: -- I would expect we will  
13 be able to get to and through Mr. Birchfield.

14 MR. POLLOCK: At least twenty  
15 minutes.

16 THE COURT: I want to stick to our  
17 time frame of leaving here at 4:30.

18 MR. BRODY: Absolutely.

19 MR. POLLOCK: Excellent.

20 THE COURT: Okay.

21 MR. POLLOCK: Thank you.

22 THE COURT: Mr. Conlan, you're still  
23 under oath. Okay?

24 THE WITNESS: Yes.

25 (A recess was taken.)

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1 THE COURT: Thank you. Please be  
2 seated. Back on the record. All counsel is here.  
3 Mr. Conlan is on the witness stand.

4 Mr. Brody, you're going to be closing  
5 up, you know, wrapping up, so to speak.

6 What I'm going to do is, the Court is  
7 going to address the in camera, at this point,  
8 issues. The Court is not inclined to accept any  
9 documents for an in camera review, except if there  
10 are any allegations of perjury, not saying that  
11 there are. But, Mr. Brody, if J&J wants to review  
12 and redact any particular documents, it may do so in  
13 a manner that could be shared with Mr. Pollock, and  
14 it would be limited to Mr. Pollock's eyes only.

15 So, look at it. If you think there's  
16 attorney-client -- and we have all seen redacted  
17 attorney -- you know, the timesheets with regard to  
18 that. That's how we're going to address the in  
19 camera review, Mr. Brody.

20 MR. BRODY: Okay. Thank you, Your  
21 Honor.

22 THE COURT: You're welcome.

23 Mr. Brody, you may continue.

24 MR. BRODY: Thank you. And I'll be  
25 able to wrap this up very quickly, I think.

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1 BY MR. BRODY:

2 Q. So, Mr. Conlan, we left off, I had  
3 asked you questions about the November 2nd  
4 publication that you authored that is at tab 15,  
5 right?

6 A. Yes.

7 Q. All right. A week later, on  
8 November 9th, you sent a letter to Johnson &  
9 Johnson's board of directors, right?

10 A. Yes.

11 Q. And you if you would turn to tab 7 in  
12 the notebook you have there.

13 A. I'm there.

14 Q. All right. And that's the letter  
15 that you wrote?

16 A. Yes.

17 Q. In that letter, you attached what you  
18 said was a minimum \$19 billion price tag to your  
19 proposal, correct?

20 MR. POLLOCK: Objection.

21 THE WITNESS: Well, I said 19 billion  
22 or such greater amount as determined by the  
23 auditors, PwC.

24 BY MR. BRODY:

25 Q. Right. So that's a minimum of 19



1 billion, 19 billion or greater, right?

2 A. Yes.

3 Q. All right. And you attached a  
4 settlement matrix as an exhibit to the letter that  
5 you wrote, correct?

6 A. Yes.

7 Q. And that was the settlement matrix  
8 that you referred to in Hearing Exhibit 4, the email  
9 that you wrote to Mr. Van Arsdale on October 18th,  
10 2023?

11 A. I believe so, yes.

12 Q. So about three weeks earlier --

13 A. Yes.

14 Q. -- correct?

15 In your letter, you told the Johnson  
16 & Johnson board that before you sent the matrix to  
17 J&J, Legacy's proposal had been reviewed and was  
18 supported by leadership counsel on both the federal  
19 MDL and in state court cases across the country,  
20 right?

21 A. Yeah. I'm looking for the exact  
22 language, but that sounds right.

23 Q. Well, it's on the first page. I'll  
24 let you find it.

25 A. Okay.

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1 Q. Second paragraph.

2 A. Right.

3 Q. It's on page 1.

4 A. I'm looking for it on page 1. I  
5 thought it was on page 2.

6 Q. It's the paragraph that starts "put  
7 simply."

8 A. Okay.

9 MR. POLLOCK: It's Plenary 62.

10 THE WITNESS: Right. Yes.

11 BY MR. BRODY:

12 Q. And that was true, right?

13 A. Yes.

14 Q. That plaintiffs' counsel reviewed  
15 that settlement matrix before you shared it with  
16 J&J, correct?

17 A. Yes. We got it from --

18 Q. And you knew that they --

19 A. We got it from Beasley Allen.

20 Q. Beasley Allen. Okay. So when you  
21 refer to "plaintiffs' counsel," you're referring to  
22 Beasley Allen?

23 A. I am.

24 Q. All right. And you knew that Beasley  
25 Allen supported it because you had discussed it with

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1       them, correct?

2               A.           Yes.

3               Q.           All right. And you had been  
4 communicating with Mr. Birchfield for over six  
5 months by November 9th, 2023, correct?

6               A.           Yeah, on and off.

7               Q.           Yeah. And you didn't get a waiver  
8 from J&J for any of that, did you?

9                       MR. POLLOCK: Objection. It assumes  
10 facts in evidence -- not in evidence, that he had to  
11 get a waiver, so I object to it.

12               THE COURT: Well, he just asked. He  
13 asked the question.

14               MR. POLLOCK: Okay.

15               THE COURT: So I'll overrule the  
16 objection, but --

17               THE WITNESS: Right. The same answer  
18 as before. I didn't think I needed one, including  
19 because I wasn't practicing law and it was a  
20 proposal, it was consensual.

21 BY MR. BRODY:

22               Q.           And you didn't get a waiver?

23               A.           Correct.

24               Q.           And didn't ask for one?

25               A.           Correct.

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1 Q. And you hadn't disclosed to J&J that  
2 you were communicating with Mr. Birchfield until  
3 that October 18th email that you sent to Mr. Van  
4 Arsdale, right?

5 A. Other than the reference in the  
6 February 2nd proposal.

7 Q. Right, the document we saw.  
8 By the way, this -- this proposal,  
9 you -- this February 2nd letter, you brought a copy  
10 of this with you to court in the hearing exhibit  
11 binder, right?

12 A. Yes.

13 Q. Right. And Mr. Pollock had copies of  
14 it ready to hand to me, already marked with an  
15 exhibit sticker, right?

16 A. I don't know what --

17 THE COURT: To the extent you know.

18 THE WITNESS: I don't know, but  
19 Mr. Pollock did have a copy.

20 BY MR. BRODY:

21 Q. Did you meet with Mr. Pollock in  
22 preparation for your testimony today?

23 A. With my counsel, yes.

24 Q. And with Mr. Pollock?

25 A. Yes.

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1           Q.           By the way, not only did you never  
2 tell J&J before -- let's put this aside -- before  
3 the 18th of October that you were meeting with  
4 Mr. Birchfield, you never told the mediators in the  
5 LTL 2 bankruptcy that you had previously represented  
6 J&J on the talc matters, did you?

7           MR. POLLOCK: Your Honor, objection.  
8 Asking directly mediation-privileged communications.  
9 And this is what the mediators -- I don't know how  
10 you can answer that question without violating the  
11 privilege.

12 BY MR. BRODY:

13           Q.           Well, let me ask you this.  
14 Mr. Conlan, mediators were not aware in LTL 2 that  
15 you had previously represented Johnson & Johnson in  
16 the talc matters, were they?

17           A.           Not that I'm aware of.

18           MR. BRODY: All right. Thank you.  
19 That's all I have.

20           THE COURT: Okay. Mr. Pollock.

21           MR. POLLOCK: Your Honor --

22           MR. BRODY: Oh, yeah, one -- yeah,  
23 one -- just one housekeeping matter.

24                       Mr. Pollock had asked that this  
25 document be marked for identification purposes as

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1 Plaintiff's 3. We would just ask the Court to  
2 receive it as part of the -- actually, as evidence  
3 in the record.

4 THE COURT: Mr. Pollock?

5 MR. POLLOCK: No objection.

6 THE COURT: All right. So that will  
7 be -- I can't believe we're going to ask that  
8 question with regard to that particular document,  
9 since it was prominently featured at this point in  
10 questioning Mr. Conlan.

11 MR. POLLOCK: We've got all day, so  
12 I'm going to go for it.

13 THE COURT: So that will be -- if we  
14 can have a copy at the point when you close,  
15 Mr. Pollock, that will be marked into evidence.

16 MR. POLLOCK: If Your Honors are  
17 dying for a copy, I can give you one right now.

18 THE COURT: No.

19 MR. POLLOCK: Okay. Proceed?

20 THE COURT: You may proceed.

21 MR. POLLOCK: Thank you.

22 With the Courts' permission, I may  
23 both sit and stand, depending upon where my  
24 eyesight's at. Okay?

25 THE COURT: At your pleasure. If you

1 want to use the podium, or --

2 MR. POLLOCK: No, I'm good.

3 THE COURT: Okay.

4 MR. POLLOCK: I have a condition  
5 called dry eye, and I -- well, my -- I have no  
6 prenup tears, so I've got enough issues, as my life  
7 partner said, for my -- for myself.

8 - - -

9 CROSS EXAMINATION

10 - - -

11 BY MR. POLLOCK:

12 Q. All right. Structural optimization  
13 and disaffiliation. You heard me ask Mr. Haas  
14 whether that would work, and he did not like the  
15 idea. He said, I think, and I'm going to slaughter  
16 it, but one, it doesn't account for futures, it  
17 doesn't account -- the auditors don't like it, and  
18 there was some other problems with it.

19 Do you agree with Mr. Haas that your  
20 approach, the Legacy approach, would not work?

21 A. I do not agree with Mr. Haas.

22 Q. Can you please explain to the Court  
23 why you think Mr. Haas got it wrong?

24 A. Yes. Structural optimization and  
25 disaffiliation of solvent mass tort companies,

1 entities that are, themselves, liable, the entire  
2 point and purpose is that it does capture future  
3 claims, as well as current claims.

4 The entities, themselves, that are  
5 liable contractually or in tort are acquired by us,  
6 so the entities that remain don't have liability in  
7 the tort system or contractually. By definition,  
8 therefore, it captures all current and all future  
9 claims. That's, quite frankly, the main purpose of  
10 it.

11 Number two, at the time that we  
12 acquire those, in this case talc-labile group of  
13 entities, the auditors, and this is a condition to  
14 us being willing to do it, have to agree that those  
15 entities we're acquiring are adequately or more than  
16 adequately funded.

17 Why do they need to do that? Because  
18 in order to remove the noncash charge from the  
19 financials of those companies, the auditors must so  
20 conclude. That way, there is no fraudulent transfer  
21 risk, there is no unlawful dividend risk. And the  
22 auditors are tough, but when they say there's enough  
23 money there to remove the noncash charge, there's  
24 enough money there to remove the noncash charge.

25 And so we can't and are not



1 interested in acquiring companies, unless the  
2 company agrees, that's number one; and number two,  
3 the auditors are comfortable removing the noncash  
4 charge.

5 I know that's a lot of complicated  
6 talk, but it's the core of it.

7 Q. So, bear in mind, I'm a simple  
8 country lawyer, so I don't -- this stuff is beyond  
9 me.

10 When you talk about "noncash charge,"  
11 can you spell that out a little bit because, I  
12 apologize, I'm not getting it. I don't know what it  
13 means.

14 A. I can. In the United States, and I  
15 can refer to outside the United States, GAAP,  
16 generally-accepted accounting principles, is what  
17 rules accounting standards. It's largely what rules  
18 what the SEC says you must put in your financials.

19 Under a particular provision, which  
20 is GAAP ASC 450, a public company must take a  
21 noncash charge, meaning set up a provision for the  
22 probable and estimable amount of a contingent  
23 liability.

24 So, when you look at, really, any  
25 public company that has a mass tort liability that

1 is current and future, they have a number, and that  
2 number is provided by a combination of their  
3 actuaries and their auditors to give the world  
4 notice that there's a problem here, so that  
5 investors can take it into account, for example, in  
6 deciding how much they'll pay for the stock.

7 In order to remove that noncash  
8 charge, the auditors have to conclude not only that  
9 the entities that are liable are no longer owned by  
10 the group, but they were adequately funded at the  
11 time that they were disaffiliated, so that it won't  
12 come back on the company.

13 In the United States, it's called  
14 GAAP ASC 450, and there's an equivalent in Europe.

15 Q. And in order to fill this noncash  
16 charge, GAAP, whatever you just said, do you have to  
17 have some clarity as to what the number is that  
18 you're ultimately looking at, the auditors are  
19 looking at?

20 A. Sum is an important modifier. The  
21 auditors look at all the datapoints. So, for  
22 example, in the case of J&J, what the auditors would  
23 look at is how many people had already agreed to  
24 accept the \$8.9 billion plan; the fact that the  
25 attorneys general, from what I read, are close to

1 agreeing to a resolution; the fact that mesothelioma  
2 claimants are, in significant number, agreeing to a  
3 resolution. They would also be impacted by the fact  
4 that there's a potential settlement for current  
5 ovarian claimants.

6 Those are all datapoints that the  
7 auditors would take into account in deciding what  
8 the amount is that has to be, essentially, put into  
9 the entities that are disaffiliated in order for  
10 them to remove the noncash charge.

11 They don't have certainty, by  
12 definition, because they are coming up with a  
13 number, but the -- and the number isn't certain  
14 because it's current and futures.

15 Q. Is structural optimization and  
16 disaffiliation a J&J confidence?

17 A. In no way, shape, or form.

18 MR. POLLOCK: And, Your Honor, I've  
19 got a time table I'm going to share with the Court.  
20 I thought we could do this together. I may  
21 periodically ask -- I may periodically ask  
22 Mr. Conlan and Mr. Birchfield to share with me,  
23 because I think the timing -- and you and I talked  
24 about this, Judge Porto, we talked about it -- that  
25 the timing of events is really important. And I

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1 would like to just break briefly from my line of  
2 questioning.

3 So I've got a chart that lays out --  
4 I'm not asking about the Beasley Allen time frame,  
5 but as far as the Jim Conlan time frame -- and  
6 you're welcome to stand up, sir, if you're -- with  
7 your permissions, Your Honors, if he wants to walk  
8 around, I assume that's okay.

9 THE COURT: Yeah, if he wants to  
10 approach the easel.

11 MR. POLLOCK: Yeah.

12 THE COURT: That's fine.

13 MR. POLLOCK: Yeah. So I'm  
14 nearsighted. I can't see far.

15 BY MR. POLLOCK:

16 Q. So this one's June 19 -- June 1988.  
17 Is that about when you started at Sidley?

18 A. Yes.

19 Q. And did you spend your entire time at  
20 Sidley until roughly May 2020?

21 A. Yes.

22 Q. And then did you make a mistake and  
23 decide to go back to the practice of law at another  
24 law firm?

25 A. Well, I didn't leave the practice of

1 law. I went from Sidley to Faegre Drinker.

2 Q. Okay. And how long did you stay with  
3 Sidley and Faegre -- go to Faegre?

4 A. I was there about 20 months.

5 Q. Okay. So that would be from roughly  
6 June 2020 to when?

7 A. To February-March 2022.

8 Q. Okay. I don't have a mark down  
9 there, but we can mark those in.

10 MR. POLLOCK: Mike, you can play  
11 Vanna White, if you want to, and write some of these  
12 in as he goes through.

13 With Your Honors' permission, what I  
14 may do is have Mike just kind of write in the time  
15 frames to help the witness, to do that, rather than  
16 have the witness do it.

17 THE COURT: Perfect. Whatever is --  
18 whichever is easier.

19 MR. POLLOCK: I'm just trying to move  
20 it along.

21 BY MR. POLLOCK:

22 Q. So, if you can write in the time  
23 period you left, that would be great. What was the  
24 date again, Jim?

25 A. I leave Sidley in June of 2020 --

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1 Q. Yeah.

2 A. -- having been there since the summer  
3 of 1988. Hard to believe that long. And I was at  
4 Faegre Drinker about 20 months, from June 2020 to  
5 February-March 2022.

6 MR. POLLOCK: So, Mike, if you can  
7 just circle the period for Faegre, whatever Jim  
8 said, and just call that "Faegre," that would be  
9 great. Okay.

10 BY MR. POLLOCK:

11 Q. The -- Jim, if you could tell us,  
12 looking at this chart -- it's just a demonstrative,  
13 it's not going into evidence, unless the Court  
14 directs otherwise.

15 During what time period did you talk  
16 about structural optimization and disaffiliation?  
17 During what time did you work on -- when you were at  
18 Sidley and Faegre, did you talk historically about  
19 it? When did you actually work on that concept?

20 A. I began the process of structurally  
21 optimizing companies that came before disaffiliation  
22 in about 2009 and 2010, and it was in the context of  
23 the big companies who had asbestos liabilities,  
24 initially, and who wanted to remove the existential  
25 threat that asbestos would eat all of the entities

1 in the family of companies, rather than just  
2 potentially the entities that were, themselves,  
3 liable.

4 So, if you could imagine a company  
5 with 500 entities and there were four that were  
6 actually liable for asbestos. In the tort system or  
7 contractually, the goal was to structurally optimize  
8 those four, removing all the operating assets, but  
9 making sure they were adequately capitalized with  
10 liquid funds so that they could operate in the tort  
11 system, but they -- you would contain the liability  
12 at that level.

13 Q. So that's my beginning date, but when  
14 did you start working on that?

15 A. 2009.

16 Q. Okay. Just say 2009, disaffiliation,  
17 I can't even spell it, as start date.

18 Mr. Brody had asked you -- I'm going  
19 to skip for one second. Mr. Brody had asked you  
20 about a proposal, which I think is at Exhibit 7.  
21 Yeah, Exhibit 7. And it's got a cell chart -- no,  
22 I'm sorry, it's Exhibit -- where is the cell chart?  
23 I apologize.

24 THE COURT: It is 7. That's the  
25 Legacy letter, November 9th.

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1 MR. POLLOCK: Yeah. Was that the  
2 cell chart one? Okay.

3 BY MR. POLLOCK:

4 Q. At last page -- yeah, the last page  
5 of it. So it's Plenary 67. Can you look at Plenary  
6 67?

7 A. Yes.

8 Q. We had talked about -- I forgot the  
9 word already. When we were talking about  
10 quantifications, specification, what did we use,  
11 that word? You used a strange word for it. It  
12 wasn't disaffiliation, it wasn't association. When  
13 you were talking about the GAAP issue, you needed to  
14 quantify the risk, there is -- anyway, you had said  
15 the arbitrators -- the auditors need a specific  
16 number, they need something to be happy with?

17 A. Yeah. They need to come up with  
18 their view of how much money needs to be in the  
19 liable entities at the time that they're acquired,  
20 for example, by a Legacy, in order for the auditors  
21 to remove the noncash charge from the financials.

22 Q. Oh, that's what I was looking for,  
23 yeah, "noncash charge." I apologize.

24 With regard to the approach that you  
25 had, you're talking about structural optimization



1 and disaffiliation, is it fair for me to say it's  
2 somewhat like Spandex, that you can -- whether the  
3 number is \$20 billion, \$30 billion dollars, \$12  
4 billion, assuming that's a fair number, anything,  
5 whatever the number is, it is, and that your  
6 approach would work based upon that number, assuming  
7 it's not too small.

8 A. Correct.

9 Q. And the matrix that's attached, which  
10 is on 67, have you seen that -- you've seen that  
11 matrix before?

12 A. Yes.

13 Q. And you attached it to your letter?

14 A. Yes.

15 Q. Have you seen other matrices?

16 A. In my life?

17 Q. In this matter. In this matter, the  
18 -- the -- in discussions with Beasley Allen, in  
19 discussions with J&J, have you seen other matrices?

20 A. Yes. I've been exposed to other  
21 matrices.

22 Q. And would it be fair to say that you  
23 at Legacy are agnostic as to what the number is  
24 because your approach is roughly the same; whether  
25 it's \$15 billion or \$30 billion, it doesn't really

1 matter a whole lot?

2 A. Or -- correct, or whether it's talc  
3 or asbestos or herbicides or pesticides or PFAS, to  
4 name a few.

5 Q. At what point in time did you first  
6 -- and you can look at the time chronology, if you  
7 would like.

8 And, Mike, I'll ask you to mark this  
9 one on.

10 When did you first hear about a \$19  
11 billion number? Where did that come from; do you  
12 know?

13 A. The 19 billion?

14 Q. Yes, sir.

15 A. It came from us, from Legacy. It was  
16 January 30, 2023. I alluded to this earlier. The  
17 Sixth Circuit -- sorry, the Third Circuit issued its  
18 opinion, the 58-page opinion, finding that the J&J  
19 filing, the LTL filing was not in good faith.

20 That afternoon or late morning, the  
21 market capitalization of J&J, the value of all of  
22 its stock, declined \$18 billion. And what that said  
23 to us is that the market, and we're big believers in  
24 the market, that the market didn't think the  
25 liability was 18; the market thought it was 18 more

1     than what it thought it was the day before.

2                     Because the liability was there,  
3     obviously, before, but the market traded the stock  
4     down \$18 billion. It recovered some later in that  
5     day, but it was clear the market really didn't like  
6     this liability, which is common. The market really  
7     doesn't like contingent liabilities for public  
8     companies.

9                     Our own view was that the market was  
10    exaggerating the liability, but the market clearly  
11    thought it was a big number.

12                    That's why, on February 2nd, just a  
13    couple of days later, the number that's in that  
14    letter adds up to 17.6. It was 16 from J&J and 1.6  
15    from us. 17.6.

16                    And again, there's a variety of  
17    factors that go into that. One is what the market  
18    thinks. Another, and I'm going to try to keep this  
19    interesting, is the discount rate used to determine  
20    the PV of the liabilities is extremely important.  
21    What that means is that as interest rates go up --  
22    for example, on the 10-year today, it's between 4.3  
23    and 4.4, the yield on the US 10-year obligation. As  
24    that number goes up, the liability goes down because  
25    as the PV of the liabilities goes down, the higher

1 the discount rate goes up.

2 So, frankly, as interest rates rise,  
3 the PV of the liability declines. So, as we all  
4 know in America today, that 10-year yield has been  
5 moving all over the place, mostly up in the last two  
6 years.

7 So it's not as simple as just looking  
8 at the market. It's not as simple as just looking  
9 at where the yield on the 10-year is. It's looking  
10 at a variety of factors. Probably the least  
11 interesting is what the experts think it is, because  
12 that's not the world we live in.

13 Q. Mr. Brody asked you some questions  
14 right before we broke for lunch, and I don't have  
15 the transcript, but I'll do the best I can.

16 You were trying to position yourself  
17 for the Legacy toggle. Hold on. You wanted to make  
18 money, and he specifically was pointing to you,  
19 meaning, I think, Legacy, not you individually,  
20 although I'm sure you would --

21 A. It would be both.

22 Q. And he also said -- I can't remember  
23 the other one, but in any event, that -- am I  
24 correct in understanding that the proposal you're  
25 making would financially benefit Legacy?

1 A. Yes.

2 Q. And that part of the Legacy proposal  
3 is premised upon the fact that if you buy these  
4 liabilities from J&J, you'll be holding onto them  
5 for a little bit and that you make some interest on  
6 that money?

7 A. That's correct. To be specific?

8 Q. Yes.

9 A. I mentioned the 10-year yield today  
10 at 4.3 to 4.4. We would absolutely expect, could  
11 virtually guarantee, that we would make 1.6 to 1.7  
12 percent more than that by simply investing in AA  
13 Corporate, so almost no risk, just matching the  
14 durations.

15 Q. And to be clear, that money is part  
16 of Legacy's investment proposal and structure  
17 because that's how you make -- hopefully, you take  
18 on risk and you make money?

19 A. Correct. We hope.

20 Q. But if you make money, that doesn't  
21 -- look, let's assume you hold onto the money for  
22 five years as opposed to one year. That doesn't  
23 increase the payout to the talc claimants, correct?

24 A. Our incentive is to hold onto the  
25 money as long as possible, to pay the claimants

1 within the [bronze] propriety. You know, not pay  
2 them soon, but pay them over time. Why? Because  
3 we're making that 1.6 to 1.7 percent spread.

4 On the other hand, we're a rational  
5 defendant. We're not going to hold on and get  
6 popped in judgments. So it's the same kind of  
7 balance that a company has when it's defending a  
8 mass tort.

9 Q. Mr. Brody mentioned -- and I'm  
10 switching gears here for a second. I'm sorry, but  
11 I'll be jumping around a little bit. He mentioned  
12 that you and Mr. Mordica were leading, at one point,  
13 when he was talking about, I believe, the Imerys  
14 matter.

15 To put that in context, were you  
16 leading at any point in time the J -- J&J's efforts  
17 in bankruptcy, or were there other firms like Weil  
18 Gotshal and Jones Day that were really leading the  
19 charge. What's was your --

20 MR. BRODY: I'm just going to object,  
21 because I think the question misstates what my  
22 question was to Mr. Conlan.

23 THE COURT: Why don't you create a  
24 question that you would like Mr. Conlan -- I don't  
25 want to say the record is mischaracterizing the

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1 question, unless we get a read-back at some point,  
2 which I don't know that we can. But I understand  
3 the objection.

4 Why don't you make the question your  
5 own, Mr. Pollock.

6 MR. POLLOCK: Sure.

7 BY MR. POLLOCK:

8 Q. If I were to say that you, Jim  
9 Conlan, have led J&J's bankruptcy efforts during the  
10 time that you were at Faegre, would that be a true  
11 statement?

12 A. That would not be a true statement.

13 Q. Were there other people, other law  
14 firms that were, in your view, far more  
15 significantly involved on behalf of J&J?

16 A. Yes. And narrowing first to the  
17 subject matter of the bankruptcy, lead counsel, far  
18 and away, lead counsel for J&J in the Imerys North  
19 America bankruptcy was Weil Gotshal, a very capable  
20 and big player in the world of the bankruptcy.

21 In LTL 1, it was Jones Day, as  
22 counsel for LTL, and it was White & Case as counsel  
23 for J&J in the LTL bankruptcy. Again, that's just  
24 bankruptcy. Jim Murdica is resolution counsel. Jim  
25 Stengel and others were litigation counsel. There

1       were a variety of different roles.

2                       But in the world of bankruptcy, our  
3       role, I -- it was Weil Gotshal for Imerys, it was  
4       Jones Day for LTL, and it was White & Case for  
5       Johnson & Johnson in the LTL bankruptcy.

6               Q.       Did Jones Day show you the LTL filing  
7       before it, J&J, filed it?

8               A.       May I answer that?

9                       THE COURT:   Yeah, sure.

10                  THE WITNESS:   No.

11       BY MR. POLLOCK:

12               Q.       You mentioned that you've had a long  
13       career at Sidley. Can you walk the Court briefly  
14       through what your evolution was. I don't want to  
15       know what your first memo was, that kind of thing.  
16       I'm talking about -- I want to get to the point  
17       where you're -- did you ever get a role of  
18       leadership? Did you ever get a role that was  
19       significant at Sidley while you were there?

20               A.       Yes, over time.

21               Q.       What roles -- can you tell me  
22       approximately what -- I want to hit the highlights  
23       of your career. If your mother was here, what were  
24       the best things that Jim Conlan did at Sidley, what  
25       would you tell her?



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1           A.           Well, I'll just describe it in terms  
2 of milestones. I graduate from law school from the  
3 University of Iowa in 1988. I had been a summer  
4 associate at Sidley the year before, so then I  
5 joined in 1988 as a first-year associate, and I  
6 immediately joined the bankruptcy group. You had to  
7 pick a group right away at Sidley.

8                       Eight years later, I became a partner  
9 at Sidley, along with a lot of other people. I  
10 don't remember what precisely the year was. I  
11 became vice chairman of the restructuring practice.

12           Q.           When was that, Jim?

13           A.           I would say that was like -- I became  
14 partner in 1996. I think vice chair of the  
15 restructuring practice was probably in 2002, 2003.  
16 I'm kind of going by what my age was.

17                       Shortly thereafter, I became co-chair  
18 of the firm-wide bankruptcy practice. Thereafter, I  
19 became chairman of the firm-wide bankruptcy  
20 practice. And I suppose other things is I went on  
21 to the executive committee.

22           Q.           When was that?

23           A.           I think it was about 2005.

24           Q.           And did you remain on the executive  
25 committee until you departed?

1 A. Until shortly before.

2 Q. And during that time period, did you  
3 have discussions with other lawyers and other law  
4 firms about potentially merging with Sidley?

5 A. Yes.

6 Q. And did you commit to those people  
7 that you would keep those discussions confidential?

8 A. Yes.

9 Q. And did they have to reveal to you  
10 how their practice was going, how their group was  
11 behaving, what kind of monetary income they were  
12 making, what their billing rates were, all kinds of  
13 sensitive information that were confidential to  
14 those law firms?

15 A. Yes.

16 Q. And did you keep -- did you commit to  
17 keeping that information confidential?

18 A. Always.

19 Q. And did you do so?

20 A. Pardon me.

21 Q. Did you do so?

22 A. I did.

23 Q. And did you also get the joy of  
24 dealing with problem partners and people who had  
25 issues, affairs, and got accused of alcoholism, that

1 kind of thing?

2 A. Yes.

3 Q. And did you have -- did you commit to  
4 keeping those things confidential, as well?

5 A. I did.

6 Q. And did you do so?

7 A. I did.

8 Q. Has anybody ever accused you at any  
9 point in time from your work at Sidley that you  
10 broached those confidences, you -- the fact that  
11 told something that you shouldn't have told out of  
12 school?

13 A. Not that I recall.

14 Q. There was a discussion regarding  
15 mediation, and I would like to get this a little  
16 clearer in my head, if I can. I don't know if you  
17 can do this without documents.

18 Do you know approximately when the  
19 mediation efforts were that involved the documents  
20 that Mr. Brody was asking about? He was asking  
21 about did you send drafts back and forth. Do you  
22 know when the mediation was?

23 A. I don't know how long the mediation  
24 went. Legacy was involved, I recall, as follows:

25 In May of 2023, Scott Gilbert, who is

1 a part of Legacy and a long-time colleague, you  
2 might say, or someone who is very familiar with Eric  
3 Green, was talking to Eric Green. Eric Green was  
4 exploring Scott's new role at Legacy. He's a senior  
5 officer. And Scott was explaining how Legacy works,  
6 and undoubtedly promoting it in some respects, as  
7 well, to Eric Green.

8 As a result of that conversation,  
9 sometime in May of 2023, Scott, and Scott alone, had  
10 a meeting with the mediators.

11 Q. Who are the mediators?

12 A. Mr. Green, Mr. Russo, and then Fouad,  
13 who is really Eric Green's right-hand person.

14 Q. Okay.

15 A. And they had a that meeting. I  
16 wasn't in that meeting, but I had the impression it  
17 went a few hours, and it was a video. And in the  
18 wake of that, there was a desire to have a more full  
19 meeting.

20 MR. BRODY: I'm sorry. We are going  
21 to get into what the mediators wanted. I'm in a  
22 situation here where the plaintiffs steering  
23 committee has claimed mediation privilege over all  
24 of its communications, and now we're getting into --  
25 if we're talking about May, we're talking about

1 during the mediation.

2 And I don't know if we should be  
3 going down the road of what did the mediators want,  
4 especially in a situation where the mediators have  
5 indicated that they believed questions about what  
6 they wanted are things that they can't disclose.

7 THE COURT: Thank you, Mr. Brody.  
8 Mr. Pollock?

9 MR. POLLOCK: I actually have no  
10 problem with that objection. I -- I can move on.

11 THE COURT: Okay.

12 MR. BRODY: Yes. The -- just to  
13 update the Court as to, as the Court is aware, the  
14 mediators responded to Deposition on Written  
15 Questions. They answered one of the questions --  
16 well, two, really. They answered one of the four  
17 substantive questions without objection, and all  
18 three of them indicated that at no point were they  
19 aware during the course of the LTL 2 mediation that  
20 Mr. Conlan had been counsel for J&J on the talc  
21 litigation.

22 MR. POLLOCK: On that one, Judge, the  
23 mediators said what the mediators said. I would  
24 like the record to simply be they were asked upon  
25 the direction of Judge Singh to answer questions in

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1 writing. They did so. Whatever it said, it said.  
2 I would rather not have it characterized by me or  
3 Mr. Brody. It says what it says.

4 And we should -- we should -- should  
5 we pose -- I assume we should mark those. But we've  
6 already agreed to mark those into identification,  
7 right?

8 Are you moving them into evidence, or  
9 not?

10 MR. BRODY: I have no objection to  
11 them being part of the record.

12 MR. POLLOCK: Let's move them into  
13 evidence.

14 THE COURT: That's fine. Okay.

15 MR. POLLOCK: Can I move on?

16 THE COURT: Yes.

17 BY MR. POLLOCK:

18 Q. The mediation continued for  
19 approximately how long?

20 A. I don't know.

21 Q. Okay.

22 A. We met on June 1 --

23 Q. All right.

24 A. -- of 2023.

25 Q. And during the course of this, with

1 the mediators, Mr. Green, [Mr.] Fouad, right, and  
2 then there was a Mr. Russo --

3 A. Yes.

4 Q. -- with those three guys, would it be  
5 fair to say that you had discussions -- that you  
6 learned information, without describing what the  
7 information was, from Beasley Allen and other  
8 members of the talc claimants committee that was  
9 confidential?

10 A. I suppose so, yeah.

11 Q. And did they learn some stuff from  
12 you that was confidential?

13 A. No. It was just the tedium of  
14 structural optimization and disaffiliation that the  
15 mediators wanted to understand in detail.

16 Q. Did the mediators advise you that, or  
17 did you already know, that what you discussed, as  
18 Mr. Brody has pointed out, in mediation is  
19 confidential?

20 A. I'm sure they did.

21 Q. And did you ever violate that  
22 confidence?

23 A. No.

24 Q. Have you ever been accused of  
25 violating that confidence?

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1 A. No, not that I'm aware of.

2 Q. Mr. Brody asked a number of questions  
3 about -- give me one second. I apologize.

4 Jim, can we agree that you have never  
5 -- have you ever served as an expert witness for the  
6 plaintiffs?

7 A. No, I have never.

8 Q. Have you ever served as an expert for  
9 Beasley Allen?

10 A. No.

11 Q. After leaving Sidley and then Faegre,  
12 have you ever been employed by Beasley Allen?

13 A. No.

14 Q. As far as your position, once you  
15 formed Legacy, you have been accused of being a  
16 side-switching lawyer. Do you believe that you are  
17 a side-switching lawyer?

18 A. No. I'm not practicing law, for one  
19 thing.

20 Q. And let me ask you the core question.  
21 At Legacy, are you working against J&J?

22 A. No. Quite frankly, I would say we're  
23 working, trying to help them to obtain finality,  
24 give them an option to obtain finality.

25 Q. Now, Mr. Brody's response to that, as



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1 you heard today during direct/cross, was that you  
2 are working against them because we would like the  
3 \$9 billion and not the \$19 billion number. So  
4 here's my question for you.

5 Mr. Haas has said, I believe he said  
6 it on the first day, that he wants a fair and  
7 reasonable settlement for the plaintiffs so that  
8 they were not overcompensated, not undercompensated,  
9 but a fair and reasonable number.

10 Did you hear that testimony during  
11 the first day?

12 A. I believe so.

13 Q. So, is it fair to say that Mr. Haas  
14 wants that result, but he only wants it if the  
15 number is \$9 billion?

16 A. I don't know.

17 MR. BRODY: It's argumentative and --

18 THE COURT: Well, I don't necessarily  
19 know if he can -- if Mr. Conlan can put himself in  
20 the mind of Mr. Haas. So, to the extent there's an  
21 objection, I don't want Mr. Conlan to speculate.

22 So why don't you rephrase the  
23 question.

24 MR. POLLOCK: Yeah, I'll be glad to.

25 MR. BRODY: For the record, Your

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1 Honor, I'll add a foundation objection to that.

2 THE COURT: Okay.

3 MR. BRODY: Thank you.

4 MR. POLLOCK: Bear with me one second  
5 here. I'm moving quickly.

6 BY MR. POLLOCK:

7 Q. Once -- if Legacy were to -- if J&J  
8 were to say, You know what, I'm going to go ahead  
9 and sell these liabilities or transfer these  
10 liabilities to Legacy. So I want you to assume that  
11 has happened. Understand my question? Let's assume  
12 that has happened.

13 Do you believe that your interest and  
14 the talc claimants committee's interest are aligned  
15 at that point? Do you have the same interest?

16 A. No, we would be opposed.

17 Q. Why would you be opposed?

18 A. Because our economics at Legacy,  
19 having acquired the talc-liable entities, it's not  
20 required. It's not acquiring the liabilities; it's  
21 acquiring talc-liable entities. I know I'm being  
22 particular about that, but it's important. We're  
23 acquiring the boxes, themselves, that are liable in  
24 the tort system, or contractually.

25 Once we own those entities, our

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1 objective is to hold onto the cash as long as  
2 possible to make that spread, 1.6 percent in a  
3 perfectly-matched structure, and we certainly don't  
4 want to pay people who can't take it from us.  
5 Judgment and settlement, just like any other mass  
6 tort defendant would look at it.

7 Q. The words that J&J have used at times  
8 during Mr. Haas' and Mr. Murdica's questioning was  
9 that the conversations that you had with  
10 Mr. Birchfield and with Beasley Allen were  
11 inherently imbued with confidential information;  
12 that it's in your neurons, I think as Mr. Murdica --  
13 Mr. Murdica's words; that you could not have ever  
14 kept that information separate and apart, what you  
15 learned from your time period at J&J and what you  
16 discussed with Beasley Allen.

17 Do you agree that your conversations  
18 were ever inherently imbued with or that you -- that  
19 it was in your neurons and you had to have divulged  
20 that information?

21 A. No, I do not agree that I was imbued  
22 or that my neurons were imbued.

23 Q. So there's a point in time when  
24 Mr. Murdica writes you a nasty-gram. Let me find it  
25 here real quickly. It's on Barnes & Thornburg

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1 letterhead, and I think it's Exhibit 6. Yeah, it's  
2 Exhibit 6.

3 So, he writes a letter, and he  
4 says -- and can you pull that up so you have it  
5 front of you, sir?

6 A. Okay. I have it.

7 Q. He says in the last paragraph on the  
8 first page, "You learned highly-privileged  
9 confidential information about J&J and LTL  
10 strategies from the attorney-client relationship."

11 Do you see that?

12 A. I do.

13 Q. Now, LTL 1, and then LTL 2, as you've  
14 testified on direct from Mr. Brody, work -- did not  
15 work effectively for J&J, correct?

16 A. Correct.

17 Q. And the bankruptcy court disagreed  
18 with J&J that that was a valid approach, right?

19 A. Well, yes. I mean, L -- what's  
20 called LTL 1, it was the Third Circuit that said  
21 cannot stay in bankruptcy, not a good faith filing;  
22 and then, ultimately, Judge Kaplan executes by  
23 dismissing. LTL files again, it's called LTL 2,  
24 somewhere around April 2023; and on July 28th, 2023,  
25 Judge Kaplan dismisses again on the grounds that

1       they are not distressed.

2               Q.           And you responded. Is -- other than  
3       learning about LTL, which is what he seems to be  
4       complaining about here, and I'm going to read the  
5       whole paragraph. "You learned highly-privileged  
6       information about J&J and LTL strategies from the  
7       attorney-client relationship. And while publicly  
8       disparaging your own strategies" -- let me stop  
9       there.

10                       Was that your own strategy to file  
11       LTL?

12                       MR. BRODY: I'm going to object on  
13       privilege grounds, based on what his -- his  
14       strategies were or were not while he was outside  
15       counsel for the company.

16                       MR. POLLOCK: Your Honor, let me  
17       rephrase, if you don't mind.

18                       THE COURT: Sure.

19       BY MR. POLLOCK:

20               Q.           Did you ever propose to J&J that they  
21       file something like LTL?

22                       MR. BRODY: Same objection, Your  
23       Honor.

24                       MR. POLLOCK: They've accused him of  
25       it, and they've testified to it, but if he wants to

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1 -- if he wants to object, I will stand on the  
2 objection and note that the record is now devoid of  
3 that fact.

4 THE COURT: Okay.

5 BY MR. POLLOCK:

6 Q. Did you respond to Mr. Murdica's  
7 letter?

8 A. I did.

9 Q. And did you respond on or about  
10 November 5, 2023, and tell him -- and what did you  
11 say that in letter?

12 MR. BRODY: The response contains  
13 privileged information of Johnson & Johnson, Your  
14 Honor. We object to reading the response. I assume  
15 it could probably be redacted in some form or  
16 another, if it hasn't been. And not knowing what  
17 he's going to say, I have to object.

18 THE COURT: Hold that thought. Let's  
19 go back and revisit Mr. Murdica's letter to  
20 Mr. Conlan. And in his -- the letter to Mr. Conlan  
21 from Mr. Murdica was that you're criticizing your  
22 own strategy.

23 I had sustained that objection. I'm  
24 reconsidering. I'm not sustaining that -- I'm not  
25 sustaining that objection. I'm overruling that

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1 objection, because it's in the letter from  
2 Mr. Murdica.

3 MR. POLLOCK: Yes, sir.

4 THE COURT: So you can ask that  
5 question again, and hold that question -- that  
6 objection, Mr. Brody.

7 MR. BRODY: Certainly.

8 THE COURT: Okay?

9 It's revealed in the letter. So to  
10 the extent there was an attorney-client privilege,  
11 that's deemed waived by Mr. Murdica.

12 BY MR. POLLOCK:

13 Q. So, Mr. Conlan, I'm going to try  
14 again. With regard to Exhibit 6, I'm going to ask a  
15 simple question. Did you propose the LT -- what  
16 became LTL to Johnson & Johnson?

17 A. Did I propose the Texas Two-Step?

18 Q. Yes.

19 THE WITNESS: Am I able to answer  
20 that?

21 THE COURT: Yes, you are.

22 THE WITNESS: No.

23 BY MR. POLLOCK:

24 Q. Mr. Murdica --

25 A. To be clear, we talked about all of

1 the options.

2 Q. Understood.

3 A. I think your question is, did I  
4 recommend that option above others.

5 Q. Did you recommend it at all?

6 A. There were options. They had pros  
7 and cons. There were certainly ones that I thought  
8 were better than others.

9 Q. Fair enough, sir.

10 When Mr. Murdica claims that you have  
11 breached a confidence, did you write back to him on  
12 November 5, 2023, and advise that you had not  
13 breached a confidence?

14 MR. BRODY: I'll let him -- I mean, a  
15 yes or no to that will not implicate privilege, but  
16 I just object to going beyond that.

17 THE COURT: But Mr. Conlan is being  
18 accused of breaching that confidence, so I'm going  
19 to permit Mr. Conlan to answer yes or no.

20 MR. BRODY: Yeah, and that's what I  
21 was saying. No objection to a yes or no answer,  
22 Your Honor.

23 THE WITNESS: I did object to that.

24 BY MR. POLLOCK:

25 Q. Did you disagree with him?



1 A. Yes.

2 Q. And did he ever write back to you and  
3 say, No, here's all the reasons why you broached a  
4 confidence, or, in fact, here's the proof you  
5 broached a confidence, or the fact is that since you  
6 broached this confidence, you should be ashamed of  
7 yourself? Anything of that nature?

8 A. No. We did have brief communication  
9 about trying to get together, but it was  
10 nonsubstantive.

11 Q. If you could go to Exhibit 4, please.  
12 What I want to do is start at the end. That would  
13 be Plenary Hearing 26. Let me know when you're  
14 ready.

15 A. Okay. I'm there.

16 Q. Are you good to go?

17 A. Yes.

18 Q. Excellent.

19 So, the first one is Doug Dachille to  
20 Robert Huffines --

21 A. Huffines.

22 Q. -- and Duane Van Arsdale and Jim  
23 Conlan. Do you see that?

24 A. I do.

25 Q. And it says, "Thank you for the

1 introduction," right?

2 A. Yes.

3 Q. And the introduction, what did you  
4 understand the introduction to be?

5 A. Mr. Huffines wrote to Mr. Van Arsdale  
6 saying, You ought to meet with these guys.

7 Q. And if you look at the next document  
8 above -- these emails -- emails go in reverse, so  
9 you have to start from the end. That's why I'm  
10 starting from the end.

11 A. Understood.

12 Q. So the next one is August 21. Duane  
13 Van Arsdale to Doug Dachille, Eric Haas, Jim Conlan,  
14 Andrew White. Do you see that?

15 A. I do.

16 Q. And it says, "Thanks for the note and  
17 nice to meet you as well. I copied Erik Haas and  
18 Andrew White who will also join the discussion."  
19 And then it goes on from there.

20 Was the discussion a discussion  
21 between Legacy and J&J?

22 A. Yes.

23 Q. And was it, the discussion, as you  
24 understood it, going to be about the Legacy  
25 Liability Solutions proposal?

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1 A. Yes.

2 Q. And did alarm bells go off at that  
3 point in time, whether it was threats and sanctions,  
4 and criticisms and claims, anything like we're  
5 seeing today that you, as Legacy Liability  
6 Solutions, were reaching out to J&J?

7 A. Not at all. And Mr. Dachille is not  
8 a lawyer, and -- he's the chief investment officer  
9 of Legacy, and he was essentially one of the primary  
10 movers here. There was no request for a  
11 confidentiality agreement and there was no  
12 objection.

13 Q. And at this point, was it -- did you  
14 believe it was clear to everyone you and your  
15 colleague was there as solely and exclusively for  
16 Legacy Liability Solutions; you were not there for  
17 -- as a J&J representative?

18 A. I was not there for --

19 Q. That Legacy Liability Solutions has  
20 its goal and J&J has its goal?

21 A. Yes.

22 Q. And your hope was that if you could  
23 sell/promote the Legacy Liability Solutions, you  
24 would make money, J&J would get it off its balance  
25 sheets, everybody would walk away happy; is that the

1 idea?

2 A. Yes.

3 Q. But you were completely -- no one  
4 complained at that point in time, to be clear, that  
5 you were now, having been a former Faegre lawyer,  
6 you were now working on behalf of Legacy Liability  
7 Solutions selling a proposal to J&J?

8 A. No one complained.

9 Q. And Mr. Haas knew about that?

10 A. Yes.

11 Q. At the top -- I'm going to skip  
12 forward to Plenary 23. Everyone's been asked about  
13 this one, so I don't want you to feel excluded.

14 So, it's Wednesday, October 18, 2023.  
15 Jim Conlan to Van Arsdale, Doug Dachille, Erik Haas,  
16 Andrew White, and Doug something. I can't read it.

17 A. Dachille.

18 Q. Yeah, it is. I -- it's crossed out.  
19 I apologize. To Doug Dachille.

20 It says that "Andrew Birchfield, Doug  
21 Dachille, and I are prepared to meet with you."

22 It's the last -- the penultimate  
23 paragraph there. Do you see that?

24 A. I do.

25 Q. Did you ever tell -- did you believe

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1 at that point in time, when you wrote this letter,  
2 this email, that you and Andy were conspiring under  
3 the cover of darkness about how to come up with a  
4 proposal that would take -- that would destroy J&J's  
5 approach?

6 A. No. The opposite. If you go back to  
7 the message that is directly below it --

8 Q. Yes, sir.

9 A. -- or before it, would be the way to  
10 describe it, is the message from Mr. Van Arsdale to  
11 which this is a response.

12 In the message from Mr. Van Arsdale  
13 dated October 6, 2023, 12:43 p.m., he says, "Hi Doug  
14 and Jim, Thank you for the follow-up note to our  
15 discussion a few weeks ago. To close the loop, we  
16 have discussed both internally," and this is the big  
17 language, "and with our auditors, and at this time,  
18 we do not have an interest in pursuing this  
19 strategy. While unlikely, we will let you know if  
20 this perspective changes in the future. Thanks  
21 again for your time and thoughts."

22 We looked at that language,  
23 particularly the auditors, and thought to ourselves  
24 and discussed it, that J&J, because they said it and  
25 Mr. Haas testified to it, actually had discussed

1 this with PricewaterhouseCoopers; and we thought  
2 either PricewaterhouseCoopers didn't understand it  
3 or it wasn't conveyed correctly, because it didn't  
4 make any sense to suggest that the auditors were  
5 saying it couldn't be done.

6 What did make sense to us is that the  
7 auditors were saying, It's going to be tricky, it  
8 could be a high number, it could be a big range.  
9 And so the follow-on email is to say, We think we  
10 can help you with the range. We think we can help  
11 you with your auditors.

12 Q. So, if I look at -- if I look at that  
13 one and I look at Exhibit 7 -- and I don't want you  
14 to have to put your fingers in both places, but  
15 Exhibit 7 is going back to the Legacy proposal of  
16 November 9.

17 A. Yes.

18 Q. So, you've got a proposal from Legacy  
19 and you've got this matrix at the end, on the last  
20 page?

21 A. Yes.

22 Q. Would you agree with my  
23 characterization that this is like peanut butter and  
24 chocolate; they're good together, but they're two  
25 different things, meaning that it was the Legacy

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1 proposal for the first several pages, it is the  
2 matrix, which is the Beasley Allen proposal -- let  
3 me stop there.

4 Would you agree with that  
5 characterization?

6 A. I would agree with it. And just to  
7 put a fine point on it, the Legacy proposal isn't  
8 dependent on agreeing with Beasley Allen or  
9 dependent on having that kind of a settlement. It's  
10 just a datapoint for the auditors to look at. We  
11 would have gone forward, provided all the other  
12 numbers worked, without any agreement from the  
13 lawyers at Beasley Allen or the plaintiffs' lawyers  
14 generally.

15 The whole point, if there's a single  
16 point I would like to convey, is companies beat  
17 their heads against the wall trying to get the  
18 claimants to agree by 75 percent-plus, and they  
19 often fail. The beauty of this structure is it  
20 doesn't require the plaintiffs' lawyers to vote or  
21 agree at all. It does require the auditors to come  
22 up with a number. It does require the company to  
23 agree. So it flips it. It flips it, quite frankly,  
24 and gives all the power to the company.

25 Q. As to the actual value on page 1,

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1 which is Plenary Exhibit 62, it says 19 [b]illion or  
2 such greater amount as determined.

3 Do you see that?

4 A. I do.

5 Q. So that is not a determination that  
6 Beasley Allen makes, correct?

7 A. No.

8 Q. So they have a proposed structure at  
9 the end, wherever this thing is on page 67. But  
10 that is not a Legacy Liability's document, correct?

11 A. Correct. And at least what we  
12 understand this to be, the matrix, is it's only  
13 current ovarian cancer claimants. It's not  
14 mesothelioma claimants. It's not attorney general  
15 claimants. It's not future mesothelioma claimants  
16 or future ovarian cancer claimants. All components  
17 of those are captured by Legacy's acquisition of the  
18 talc-liable entities.

19 And when we come up with a number at  
20 Legacy of 19, we're looking at that number and how  
21 much it will grow, and how that growth will match  
22 against the claims, sort of like an insurance  
23 company.

24 Q. You heard some testimony during  
25 Mr. Haas' testimony on day one and Mr. Murdica's



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1 testimony, I found the same, in the afternoon,  
2 that -- at page 56 for Mr. Haas -- it was egregious  
3 that Jim was communicating with talc claimants  
4 committee and Andy. Mr. Haas says it was the first  
5 time, was October 18, 2023. He also then says he  
6 was shocked -- this is page 53 to 54 of the  
7 transcript. If you want to see it, I can show you.  
8 Mr. Murdica then parrots the language, shocked and  
9 appalled, page 238.

10 At any point in time, did you ever  
11 disclose a single J&J confidence to Andy Birchfield?

12 A. Absolutely not.

13 Q. As far as what you knew, from your  
14 work at Faegre on behalf of J&J, is that at all  
15 relevant, other than that they're related because  
16 they involved talc somehow, was it related at all to  
17 your proposal for Legacy today?

18 A. No. There is nothing in our  
19 proposal -- which, by the way, would be different  
20 today, because factors have moved around, including  
21 interest rates, some claims have been settled.

22 What is required for the Legacy  
23 proposal has nothing to do with any confidential  
24 information I've obtained. In fact, this structure,  
25 this type of proposal has been made to lots of

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1 companies about whom -- I don't have any  
2 confidential information. It's the same structure.

3 Q. And if we go to the document of  
4 February 2, 2023, which is the document that closes  
5 with the language Mr. Brody's asked you about  
6 multiple times, and I'll -- to give him credit, he  
7 points out, "This is a proposal for agreement  
8 between Legacy Liability Solutions and Johnson &  
9 Johnson. Legacy and J&J will agree as follows."

10 As Mr. Brody has noted, it has six  
11 points. The sixth point is, "Legacy reserves the  
12 right, in its discretion, to negotiate settlements  
13 with interested asbestos-plaintiff law firms of some  
14 or all pending claims filed by such firms. All such  
15 settlements to become effective at closing."

16 You have seen that sentence before,  
17 correct?

18 A. Yes.

19 Q. Did Mr. Haas or Mr. Duato ever write  
20 back to you and say, You can't do that. You're a  
21 former J&J lawyer. We own you. You were at Faegre.  
22 Did they ever complain to you?

23 A. No.

24 Q. With regard to the -- bear with me  
25 one second.

1 MR. POLLOCK: There was no objection,  
2 I think, to Exhibit 4. So that you -- you had --  
3 oh, is that -- can we admit that now into evidence  
4 so it can be -- I can deal with that as a  
5 housekeeping matter, if you want me to.

6 MR. BRODY: I don't know which was  
7 Exhibit 4.

8 MR. POLLOCK: I'll deal with it  
9 later. I can't remember for certain, so I'll go  
10 back to it.

11 Judge, if you could, I -- I think I  
12 may actually be done. Can you give me three minutes  
13 just to talk with my client and prepare my notes?

14 THE COURT: Sure.

15 MR. POLLOCK: I promised to keep it  
16 brief, and I'm trying to do so. Okay?

17 THE COURT: We'll stay on the record.

18 MR. POLLOCK: I apologize.

19 THE COURT: That's okay.

20 (Brief pause.)

21 MR. POLLOCK: Your Honors, I have no  
22 further questions of Mr. Conlan.

23 THE COURT: Thank you.

24 Judge Singh, do you have any  
25 questions?

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1 JUDGE SINGH: I do not.

2 THE COURT: I have a couple  
3 questions.

4 After the quarterly call, Mr. Conlan,  
5 the J&J stock went down what, what dollar value?

6 THE WITNESS: Yeah. It wasn't the  
7 quarterly call, Your Honor. It was on January 30,  
8 2023.

9 THE COURT: Oh, after Ambro's --  
10 Judge Ambro's decision?

11 THE WITNESS: Correct. So, that day,  
12 the Judge Ambro in the Third Circuit issued its  
13 opinion, and when it issued its opinion, the value  
14 of all of J&J's stock, which I refer to as market  
15 cap, declined \$18 billion that day. It bounced  
16 around some, but it declined substantially.

17 THE COURT: And Legacy got its total  
18 value for a possible settlement from that market  
19 move?

20 THE WITNESS: That was one of the  
21 important market elements, other interest rates.

22 THE COURT: And other interest rates.

23 Now, when you testified, when  
24 Mr. Brody was questioning you, you testified you  
25 were involved in several team meetings, all-hands

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1 meetings, and your focus was on the bankruptcy.

2 THE WITNESS: Yes, sir.

3 THE COURT: And other aspects about  
4 the valuation, the tort valuation may have been  
5 discussed, probably was discussed, but you didn't  
6 really focus on that because that wasn't your area.

7 THE WITNESS: Not my area. However,  
8 I would add, when J&J filed and it became public,  
9 the bolt-on settlement offer, that was 4.2. So I  
10 and everyone was aware of that.

11 THE COURT: Now, you had said,  
12 though, going back, your focus was on the bankruptcy  
13 and the restructuring, et cetera. When you go to  
14 Legacy, you then become involved in the tort  
15 analysis, right?

16 So, what happened from when you were  
17 with Faegre, looking at the bankruptcy and the  
18 structuring, the Imerys bankruptcy? You didn't  
19 focus it on the tort liability valuation, but at  
20 Legacy, you did. How -- where did that change come  
21 from?

22 THE WITNESS: Yeah. So, Legacy is  
23 comprised of a lot of people. One of the people is  
24 sitting in the courtroom back there, John  
25 Gasparovic.

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1                   Mr. Gasparovic, could you raise your  
2     arm?

3                   Mr. Gasparovic, for example, was the  
4     general counsel of five companies, two public  
5     companies. One of those was BorgWarner. Who's  
6     going to write that up there? BorgWarner was  
7     afflicted by an asbestos problem, as you may recall.  
8     I think everybody knows that.

9                   While Mr. Gasparovic was the general  
10    counsel, he wanted to cabin, contain that asbestos  
11    liability so that it wouldn't eat the entire  
12    company. And so I structurally optimized BorgWarner  
13    while I was -- while Mr. Gasparovic was the general  
14    counsel.

15                  Some years later, those entities  
16    called -- we named them Morse TEC -- were  
17    disaffiliated in a sale to Enstar. Mr. Gasparovic  
18    brings that expertise to Legacy.

19                  Scott Gilbert, a very prominent  
20    insurance and insurance restructuring lawyer, joins  
21    Legacy. He brings that dimension to it.

22                  Doug Dachille is the CIO of Legacy.  
23    He's formerly the CIO of AIG. And in his prior  
24    life, the hedge fund he created, which is merged  
25    into AIG, he managed \$8 billion worth of the

1 asbestos liabilities of the so-called 524(g) trusts  
2 of prior bankruptcy proceedings.

3 And so all of those elements were  
4 brought together to create Legacy.

5 What do I bring? I bring the  
6 expertise of a bankruptcy lawyer which watched  
7 companies struggle, often ineffectively, to try to  
8 get the plaintiffs' lawyers to agree by 75 percent-  
9 plus in number to a solution that will resolve their  
10 current and future liabilities.

11 And my view after, well, there had to  
12 be a better way, another way that wouldn't hand so  
13 much power to the plaintiffs' lawyers and give the  
14 company what it, frankly, needs and deserves, which  
15 is an option that allows it to say: I can get rid  
16 of current and future liabilities without having to  
17 go to the bankruptcy court, without having to beg  
18 the plaintiffs' lawyers, and I just -- I have to  
19 agree to the amount, and I have to get my auditors  
20 to agree, so it becomes a transaction, not a  
21 litigation.

22 THE COURT: So the settlement  
23 authority, then, hypothetically, not with the  
24 company - in this case, J&J - all similar authority  
25 rests with Legacy? Is that --

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1 THE WITNESS: Precisely.

2 THE COURT: -- how the structure is?

3 THE WITNESS: Precisely.

4 THE COURT: Because then, also, I was  
5 going to ask, without 75 percent and without the  
6 involvement of J&J, how you get them then to settle,  
7 the structure is J&J provides you with the authority  
8 to settle?

9 THE WITNESS: They essentially are  
10 selling us the liable entities.

11 THE COURT: And the authority.

12 THE WITNESS: And the authority.

13 THE COURT: What happens if interest  
14 rates go down? You have -- you know, you have a  
15 1-and-a-half percent on top of the existing interest  
16 rate that you're making money on, and you said the  
17 tort liability goes down proportionate to when the  
18 interest rates go up.

19 THE WITNESS: Right.

20 THE COURT: What happens if the  
21 interest rates go down?

22 THE WITNESS: Right. And this is  
23 Mr. Dachille's department. We make sure they are  
24 closely matched, including duration, so that if  
25 interest rates go down, which would result in the



1 liability going up, the value of our portfolio will  
2 also go up, because we have matched AA Corporates.

3 So it's a no -- a very, very low risk  
4 structure, like an insurance company, so that the  
5 assets, the AA Corporates, are tightly matched  
6 against the liabilities. And if they both move up,  
7 fine; if they both move down, fine. But you don't  
8 want one to move up and the other to move down.

9 THE COURT: All right.

10 Judge Singh?

11 JUDGE SINGH: I don't have anything.

12 THE COURT: Mr. Pollock, any  
13 questions before we turn to Mr. Brody, based on the  
14 Court's questions?

15 MR. POLLOCK: No, Your Honors. Thank  
16 you.

17 THE COURT: You're welcome.

18 Mr. Brody?

19 MR. BRODY: Thank you, Your Honor,  
20 and I'll try to be brief so that we can moving  
21 forward.

22 - - -

23 REDIRECT EXAMINATION

24 - - -

25 BY MR. BRODY:

1           Q.           So, Mr. Conlan, you were asked about  
2           Weil Gotshal's role in the Imerys bankruptcy. Do  
3           you recall those questions by Mr. Pollock?

4           A.           I do.

5           Q.           And you frequently, in the course of  
6           your discussions with the inhouse team at J&J,  
7           discussed and addressed your views on Weil Gotshal's  
8           analysis, didn't you?

9           A.           Yes.

10          Q.           And you discussed with them your  
11          views on Jones Day's analysis, right?

12          A.           I don't recall that. For example, or  
13          to illustrate, in the Imerys North America  
14          bankruptcy case, during the pendency of that, I was  
15          part of the team, if you will, the all-hands team  
16          that would work on what was happening there.

17                        I don't recall any such effort during  
18          the LTL case, of which I was a part.

19          Q.           I'm -- and maybe my question was a  
20          little imprecise. You said, Well, the LTL  
21          bankruptcy, that was Jones Day. And you discussed  
22          your views on the Texas Two-Step with inhouse  
23          counsel at J&J, correct?

24          A.           I discussed my views of what Jones  
25          Day was doing in North Carolina, and the pros and

1 cons of it, and what they had to achieve, what the  
2 risks were, before LTL --

3 Q. Right. You discussed the risks and  
4 benefits to J&J in a privileged and confidential  
5 setting, correct?

6 A. Yes.

7 Q. All right. You indicated that  
8 whether the structural optimization and  
9 disaffiliation approach works depends on the amount,  
10 right?

11 A. Yeah. Particularly, the auditors.

12 Q. Right, exactly, because you said you  
13 have to get the auditors on board with the amount,  
14 or it's not going to work, you're going to be, you  
15 know, potentially at risk for something like a  
16 fraudulent transfer on allocation.

17 A. We -- two things. One, we just  
18 wouldn't do it; and number two, the company wouldn't  
19 either, because it wouldn't remove the noncash  
20 charge.

21 Q. And the -- so whether the number  
22 works depends on whether you, you know, drill down  
23 and gotten to a number that is big enough, right?

24 A. Are you talking about the auditors?

25 Q. I'm talking about whether -- whether

1 a structural optimization and disaffiliation is  
2 going to successfully resolve liabilities, is  
3 ultimately going to depend on whether that number is  
4 that is used to capitalize the disaffiliated entity  
5 is high enough?

6 A. Well, it's resolved for the company  
7 no matter what, because once the auditors remove the  
8 noncash charge --

9 Q. But it's not -- but it's not resolved  
10 if the auditors won't do that; that's your --

11 A. Correct.

12 Q. -- testimony, right?

13 A. That is correct.

14 Q. And so you have to have a number that  
15 is going to reflect things like -- and you listed  
16 some of them in response to Mr. Pollock's question  
17 -- futures, values of current claims; in the talc  
18 context, whether it's ovarian or ovarian plus the  
19 mesothelioma claims. All of that is going to have  
20 to get wrapped into that deal, right?

21 A. All of those things would be taken  
22 into account by the auditors.

23 Q. Right, exactly. And by the way,  
24 Beasley Allen was okay with the \$19 billion number;  
25 you shared that with them before you sent the letter

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1 to the board of directors, right?

2 A. I didn't ask them if they were okay  
3 with it. We didn't need their vote.

4 Q. They were okay -- well, you told J&J  
5 that they were okay with the proposal, right?

6 MR. POLLOCK: Objection.

7 BY MR. BRODY:

8 Q. In your letter, you told -- you  
9 told --

10 THE COURT: Based on the letter that  
11 he --

12 BY MR. BRODY:

13 Q. You told the board of directors on  
14 November 9th, 2023, that your proposal had the  
15 support of outside counsel.

16 MR. POLLOCK: Your Honor, the  
17 document says what it says. That's the best  
18 evidence. It says \$19 billion, other numbers as  
19 justified by J&J's auditors. So, to me, the -- I  
20 think if we're going to get into this language  
21 again, it has to be precise.

22 THE COURT: Right.

23 What's the exhibit, Mr. Brody, you're  
24 referring to?

25 MR. BRODY: It's Hearing Exhibit 7.

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1 BY MR. BRODY:

2 Q. Let me ask you this.

3 THE COURT: So the second paragraph?

4 MR. BRODY: You know, we -- yeah.

5 Well, first and second.

6 THE WITNESS: I think I can answer  
7 it.

8 BY MR. BRODY:

9 Q. Let me ask you a different question  
10 since we're now a little bit back and forth beyond  
11 it.

12 The factors that we were talking  
13 about that have to go into a number, right, analysis  
14 of the value of claims, is certainly going to be  
15 something that you would expect that an auditor  
16 might be interested in; fair?

17 A. I think that's one of the factors,  
18 given my experience, auditors look at.

19 Q. Right, or if the -- if it were the  
20 case, damages analysis, something like that?

21 A. Is one of the factors the auditors  
22 will look at.

23 Q. Yeah.

24 A. Settlements.

25 Q. Anticipated incidence of future

1 claims?

2 A. Is one of the factors the auditors  
3 would look at.

4 Q. Right. And Beasley Allen shared its  
5 confidential work product on those very topics with  
6 you last year, didn't they?

7 A. Beasley Allen did share some  
8 privileged information with some of the people in  
9 Legacy.

10 Q. Yeah, including you.

11 A. I don't recall receiving it. But I  
12 can tell you this. You asked the question whether  
13 they were okay. They were okay with structural  
14 optimization and disaffiliation. Not that we needed  
15 them to be okay, because we don't need the yes vote.  
16 That's the whole point.

17 On the second question, the 19  
18 billion or such greater amount as the auditors  
19 require has to cover everything. It has to cover  
20 current and future meso, it has to cover current and  
21 future ovarian, it has to cover attorney general  
22 costs, it has to cover defense costs. All of those  
23 things have to be included.

24 Q. And so -- so, Beasley Allen shared  
25 all of that, all of that information -- I mean, you

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1 don't recall specifically what you looked at and  
2 when, but you do recall that Beasley Allen shared  
3 its privileged and confidential work product on  
4 things like claim values, damages, futures, with  
5 Legacy, right?

6 MR. POLLOCK: Objection, Your Honor.  
7 We're talking about mediation-confidential  
8 information. How can he answer that question?

9 THE COURT: I don't know if that was  
10 covered in the mediation. Is that a topic that was  
11 covered in the mediation?

12 MR. BRODY: It's straight from the  
13 privilege log that's been supplied to us.

14 MR. POLLOCK: The mediation privilege  
15 log. He's asking about the merits and substance of  
16 mediation privilege logs.

17 MR. BRODY: I'm simply asking whether  
18 that was provided to -- by Beasley Allen to Legacy.

19 MR. POLLOCK: He is not. He is  
20 asking about the details that were discussed, that  
21 Judge Schneider, sitting behind us in the  
22 courtroom --

23 THE COURT: I'll sustain the  
24 objection.

25 MR. BRODY: All right. I'll make it



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1 clear.

2 BY MR. BRODY:

3 Q. That was provided to -- that  
4 information was provided to you, without getting  
5 into the substance of it.

6 THE COURT: Judge Singh has a  
7 question.

8 JUDGE SINGH: Okay. Yeah, if you  
9 don't mind. I just want to go back to the line of  
10 questioning about your testimony that you didn't  
11 need the consent of Beasley Allen or other  
12 plaintiffs.

13 If we turn to Exhibit 7, on page 2,  
14 it's labeled Plenary Hearing 63, the second  
15 paragraph under Details of Proposal.

16 THE WITNESS: I'm sorry. I'm sorry,  
17 Your Honor. Exhibit 7?

18 JUDGE SINGH: Yes.

19 THE WITNESS: Okay.

20 JUDGE SINGH: I'm sorry, I'm going  
21 fast.

22 THE WITNESS: I'm on Exhibit 7 now.  
23 Sorry.

24 JUDGE SINGH: Okay. In the second  
25 paragraph under Details of Proposal, it says, "To

1 provide enhanced certainty to PwC in its  
2 determination, it is important to note that Leading  
3 Counsel in the MDL have agreed to support an opt-in  
4 settlement with Legacy," et cetera.

5 Do you see that language?

6 THE WITNESS: I do, yes.

7 JUDGE SINGH: So what was the  
8 important piece of this? Why is that important to  
9 PwC?

10 THE WITNESS: Yeah. So when the  
11 auditor, PwC, is looking at how much money has to be  
12 in the talc-liable entities for them to remove the  
13 noncash charge -- they don't like removing it,  
14 they're a conservative group of people -- but to  
15 remove it, they want to have all of the data that  
16 will help them assess the range of potential  
17 liabilities; and, frankly, they want to make sure  
18 there's enough money to meet the high end of the  
19 range, because they don't want to be criticized  
20 later if it were to turn out that there's not enough  
21 money.

22 And so the potential of settlement,  
23 even if they're just potential, is an important  
24 datapoint. The \$8.9 billion settlement, which  
25 didn't garner enough support, would be relevant,

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1 also. The fact that that many people were willing  
2 to support that is an important datapoint.

3 JUDGE SINGH: But here this  
4 references an agreement, that there's -- "Leading  
5 Counsel in the MDL have agreed." So there's  
6 something more than just a datapoint in terms of  
7 what was negotiated --

8 THE WITNESS: Yeah, it --

9 JUDGE SINGH: -- previously; is that  
10 correct?

11 THE WITNESS: Yes. So the concept  
12 from Beasley Allen was its belief, or you could say  
13 its agreement, that it would support, not that it  
14 could deliver it, but that it would support  
15 something like this. It wasn't -- they didn't have  
16 the authority, we didn't have the authority to enter  
17 into the agreement. But an auditor who is saying,  
18 Is it this big or is it this big, in coming up,  
19 frankly, taking off the high end of the range, which  
20 hopefully they would do, and lower it down to this,  
21 all of these potentials for resolution help them  
22 take the high end of the range off.

23 Again, it's not settlement. We're  
24 just taking the liable entities and they're agreeing  
25 that the liable entities have enough funds in them

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1 that J&J can be removed from the picture.

2 JUDGE SINGH: Okay. Thank you.

3 BY MR. BRODY:

4 Q. And so, post-bankruptcy, post-  
5 mediation, you were having discussions, I think as  
6 you testified, with Mr. Birchfield about the  
7 settlement matrix that I think you said is his  
8 settlement matrix that was attached to your letter  
9 to the J&J board, right?

10 A. Yes.

11 Q. Right. And this was after, I think  
12 you've said, that they had previously -- Beasley  
13 Allen had previously sent you related privileged and  
14 confidential work product, right?

15 A. Sent people at Legacy privileged  
16 information.

17 Q. Right. And even after the mediation,  
18 as you were having these discussions with  
19 Mr. Birchfield -- I mean, you were asked about J&J  
20 not raising an objection when you reached out to  
21 Mr. Van Arsdale or when he wrote back and included  
22 you on an email that was dated August 21st of last  
23 year; you remember that, right?

24 A. Can you draw me to it?

25 Q. It's part of Hearing Exhibit 4.

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1 A. Okay.

2 Q. Mr. Pollock asked you, Well, did J&J,  
3 you know, raise any alarm bells --

4 A. Yes, I'm sorry.

5 Q. -- and you -- you, you know, no, we  
6 don't want you talking about structural  
7 optimization.

8 A. Correct.

9 Q. But you didn't tell them you were  
10 working with Mr. Birchfield, did you?

11 A. I didn't call it to their attention,  
12 no.

13 Q. Right. And when you went in and you  
14 met with them on September 11th, you didn't tell  
15 them you were working with Mr. Birchfield at that  
16 time, either, did you?

17 A. I did not call it to their attention,  
18 no.

19 Q. And it was only -- it was only on  
20 October 18th that you did that, right?

21 A. Correct.

22 Q. Right. And during that time period,  
23 that's when you were having the discussions with  
24 Mr. Birchfield and Beasley Allen about the  
25 settlement matrix and what kind of support are we

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1 going to get for a settlement matrix so that I can  
2 represent to Johnson & Johnson that I have the  
3 support and that I'm confident that I'm going to get  
4 the support, right?

5 A. There's two components. One is it's  
6 helping us assess whether we want to take this and  
7 at what price; and number two, it's helping the  
8 auditors take the high end of the range off in  
9 coming up with the number at which they'll remove  
10 the noncash charge.

11 Neither happens unless J&J says --  
12 sorry. Structural optimization and disaffiliation  
13 don't happen unless J&J says yes and the auditors  
14 agree and provide a number. Otherwise, nothing goes  
15 anywhere.

16 Q. And my question was a little  
17 different. My question was, actually, you were,  
18 during this time period, having discussions about  
19 the matrix and whether you were going to get that 95  
20 percent support with Mr. Birchfield and Beasley  
21 Allen, correct?

22 A. I wouldn't call it discussions.  
23 Mr. Birchfield said, I think I could get 95 percent  
24 for this. We didn't negotiate it. We didn't -- it  
25 was nothing like that.

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1 Q. And this is -- it is the matrix, it  
2 has claim values, right?

3 A. Yeah, for what we understand to be  
4 current ovarian cancer claimants. Not meso, not  
5 futures, not the attorney general claims.

6 Q. And your testimony, if I understand  
7 it, is that they shared their privileged and  
8 confidential attorney work product with you, right?

9 A. That's my understanding.

10 Q. But you, when you were having your  
11 discussions with them, walled off everything you  
12 learned in 20 months representing Johnson & Johnson  
13 in one part of your brain so that you wouldn't  
14 disclose client confidences from the other part of  
15 your brain when you were having discussions with  
16 Mr. Birchfield; is that your testimony?

17 A. Correct.

18 MR. BRODY: Thank you. That's all I  
19 have.

20 THE COURT: Mr. Pollock?

21 MR. POLLOCK: One question.

22 - - -

23 RECROSS EXAMINATION

24 - - -

25 BY MR. POLLOCK:

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1           Q.           Everything you learned, let's just  
2       pick on that last phrase, tell me one thing,  
3       whatever it is, that you learned while working for  
4       J&J that was directly relevant, that was necessary  
5       for you to propose the Legacy Liability Solution.  
6       I'd like to know one thing that's --

7                       MR. BRODY:   I'm sure --

8                       THE COURT:   With the exception of  
9       attorney-client privilege.

10                      MR. POLLOCK:  Actually, Your Honor,  
11       I'm even including that.  The fact is, this is --  
12       this goes to the significantly harmful element, Your  
13       Honor.  I need to know, tell me the one thing,  
14       because right now I'm seeing a lot of nothing.  I'm  
15       seeing that --

16                      THE COURT:   Well, I'm permitting the  
17       -- what's your -- any objection, Mr. Brody?

18                      MR. BRODY:   Yeah.  The objection is  
19       it is privileged.  Tell me one thing you learned  
20       that would be relevant to this, and obviously what  
21       he learned was privileged.

22                      MR. POLLOCK:  Let me take it step by  
23       step.  How about this.

24       BY MR. POLLOCK:

25           Q.           Is there anything, just a yes or no,



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1 is there anything that you learned while you were at  
2 J&J that was absolutely necessary for you to perform  
3 your function as the CEO of Legacy making a proposal  
4 on behalf of Legacy Liability Solutions; just yes or  
5 no?

6 A. No.

7 MR. POLLOCK: Excellent. I'm done.

8 THE COURT: Okay. We're going to  
9 continue. I would look to see if we were going to  
10 take a break.

11 Mr. Conlan, you can step down.

12 We'll go a little bit further.

13 Mr. Brody, did you want to have  
14 Mr. Birchfield come up?

15 MR. BRODY: Yeah. I will call  
16 Mr. Birchfield, unless the Court thinks it would  
17 easier to take a recess, a natural recess now and  
18 not interrupt the flow.

19 THE COURT: No, I think we'll play it  
20 by ear.

21 Thank you, Mr. Conlan.

22 Mr. Birchfield, please come forward.

23 Before you're seated, Mr. Birchfield,  
24 please raise your right hand, tell me your name, and  
25 spell your last name.

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1 THE WITNESS: Andy Birchfield,  
2 B-I-R-C-H-F-I-E-L-D.

3 - - -

4 ANDY BIRCHFIELD, having been duly  
5 sworn, was examined and testified as follows:

6 THE COURT: Thank you. You may be  
7 seated.

8 - - -

9 DIRECT EXAMINATION

10 - - -

11 BY MR. BRODY:

12 Q. Mr. Birchfield, do you have a copy of  
13 the hearing exhibits there with you?

14 A. I do.

15 Q. All right. Do you have anything else  
16 besides the hearing exhibits there?

17 A. I have my pen.

18 Q. I just meant in the notebook, but  
19 that's okay. Whatever you have in your coat is all  
20 right.

21 A. Notes on some times.

22 Q. Okay. Notes for today?

23 A. Yes.

24 Q. All right. Well, let me --

25 A. If I get into dates, I have some

1 notes.

2 Q. If you refer to your notes, we'll  
3 talk about them. Okay?

4 A. Okay.

5 Q. You knew in 2020 that James Conlan  
6 was representing Johnson & Johnson in the talc  
7 matters, correct?

8 A. I knew -- I knew that Mr. Murdica had  
9 told me that Jim Conlan was working -- he was  
10 working with, he was having dinner with, at a ski  
11 resort with the FCRs pertaining to the Imerys -- the  
12 Imerys proposal that we were working together, that  
13 Mr. Murdica and I were working together on. I knew  
14 -- I knew from Mr. Murdica that extent. But that  
15 was it.

16 Q. Right. And so you understood that  
17 Mr. Conlan was acting on behalf of J&J, correct?

18 MR. POLLOCK: Just to be clear, this  
19 is direct, can I get a time, a point in time,  
20 because I need to know when he's working on what.

21 THE COURT: Sure.

22 Mr. Brody?

23 MR. BRODY: The question was in 2020.

24 MR. POLLOCK: 2020.

25 THE WITNESS: In 2020, Mr. Murdica

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1 and I had made a proposal to the -- to the Imerys  
2 TCC, and part of that proposal was dependent on the  
3 FCR support. And so Mr. Murdica told me -- that was  
4 the extent. Mr. Murdica told me that Mr. Conlan was  
5 at a conference, a bankruptcy conference. They were  
6 -- he would be skiing and having dinner with the  
7 FCR, FCR's counsel to try to gain support for that  
8 proposal.

9 MR. BRODY: Okay. And I guess  
10 counsel for Beasley Allen is going to update their  
11 chart in realtime during my examination?

12 MR. POLLOCK: I'll do it later. I  
13 apologize. I'll do it later.

14 MR. BRODY: I don't know how they  
15 want to do this, but --

16 THE COURT: Well, it's not -- it's  
17 not in evidence, so you can just continue,  
18 Mr. Brody.

19 MR. BRODY: Thank you.

20 BY MR. BRODY:

21 Q. And again, just so the record is  
22 clear, Mr. Birchfield, you knew that Mr. Conlan was  
23 acting on behalf of J&J at the time, correct?

24 A. I knew what Mr. Murdica had told me.

25 Q. All right. And that's what

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1 Mr. Murdica told you, right?

2 A. Yeah.

3 Q. All right. Mr. Conlan was at the  
4 Faegre Drinker law firm at the time, right?

5 A. That's what I've heard today.

6 Q. And you knew that Faegre Drinker was  
7 lead counsel for J&J in the MDL in Trenton, correct?

8 A. I knew Ms. Sharko was lead counsel in  
9 the MDL and that she was with Faegre.

10 Q. And that she was also lead counsel  
11 here, in Atlantic City, correct?

12 A. Yes.

13 Q. All right. And in 2020, the cases  
14 that were pending against Johnson & Johnson, both  
15 here in Atlantic City and in Trenton, were active,  
16 correct?

17 A. Were active? I'm sorry.

18 Q. Yes, active.

19 A. Yes.

20 Q. Because that was before the  
21 bankruptcy stay that followed the LTL petition  
22 filing in October of 2021, right?

23 A. Yes.

24 Q. And 2021 was when you proposed to J&J  
25 through Mr. Murdica to settle all ovarian cancer

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1 talc claims, current and future, through the Imerys  
2 bankruptcy for \$3.25 billion, correct?

3 A. No.

4 Q. Do you recall giving a deposition in  
5 April of last year, Mr. Birchfield?

6 A. I do.

7 MR. BRODY: If I may approach to hand  
8 him --

9 THE COURT: Could you share it with  
10 Mr. Pollock first?

11 MR. BRODY: Of course.

12 MR. POLLOCK: I thought it was  
13 Plenary Exhibit 29. Isn't it? Are we talking about  
14 a different deposition?

15 MR. BRODY: I've got the whole thing  
16 here.

17 MR. POLLOCK: Okay. I object to  
18 using the -- I've got -- they entered the document,  
19 they produced the records, they put up what they  
20 wanted. They have Exhibit 5. I don't know why  
21 we're going beyond the exhibits, and [-] the record.  
22 I now have to prepare for this, read it on the fly.

23 THE COURT: Well --

24 MR. BRODY: It's a page, Your Honor.  
25 It's --

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1 THE COURT: Well, go ahead.

2 MR. BRODY: Thank you. May I

3 approach?

4 THE COURT: You may.

5 MR. BRODY: Would the Court like a

6 copy?

7 BY MR. BRODY:

8 Q. Mr. Birchfield, I've handed you a  
9 copy of the transcript of your deposition from  
10 April 17th, 2023. Do you have that?

11 A. I do.

12 Q. If you would, turn to page 65, line  
13 24. Are you there?

14 A. Yes.

15 Q. And it carries over to the next page.  
16 If you turn to the top of page 66, you were asked:

17 "Based on your review of the  
18 document, Mr. Birchfield, does this refresh your  
19 recollection that in September of 2020, you proposed  
20 to Johnson & Johnson, through its representative,  
21 Mr. James Murdica, to settle all ovarian cancer  
22 claims, both current and future, through the Imerys  
23 bankruptcy for a total of \$3.25 billion?"

24 And your answer was:

25 "So, I submitted this -- I submitted

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1 -- I submitted this proposal. That is true."

2 That was your response, correct?

3 A. That is my response that I submitted  
4 this proposal, but the proposal --

5 Q. And --

6 MR. POLLOCK: Your Honor, I got  
7 sandbagged with a document at the last second, a  
8 page I've never read, and a witness I cannot prepare  
9 because I didn't know he was going to go, when  
10 they've actually produced the document as Exhibit 5.  
11 I would beg you, give him some latitude to answer  
12 the question, because Mr. Brody wants to steamroll  
13 this thing. This is not the Brody hearing. We get  
14 to hear from the witness.

15 THE COURT: True, but that was a  
16 question that was posed on March 25th.

17 MR. POLLOCK: No, sir. The fact is  
18 it was --

19 THE COURT: The settlement --

20 MR. POLLOCK: No, this is --

21 THE COURT: The settlement number  
22 of --

23 MR. BRODY: Yes.

24 THE COURT: -- I remember  
25 specifically --



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1 MR. POLLOCK: Correct.

2 THE COURT: -- came from Mr. Haas'  
3 testimony that was with regard to the settlement  
4 drew some reaction. So that's not a number that was  
5 really hidden. At least it wasn't hidden from me,  
6 Mr. Pollock.

7 MR. POLLOCK: Your Honor, Mr. Haas  
8 testified that he thought Andy had reneged on a  
9 deal, and he --

10 THE COURT: That number.

11 MR. POLLOCK: He quoted directly from  
12 the transcript, at that point in time. Now we're  
13 going to a completely different section of the  
14 transcript, which I have not had the opportunity to  
15 prepare this witness on.

16 I'm just simply asking for a little  
17 bit of latitude. Mr. Birchfield is trying to  
18 explain the answer. But if you don't want to give  
19 it to me, it's your courtroom, Judge, respectfully.

20 THE COURT: Well, you asked the  
21 question, Is that the number?

22 MR. BRODY: I -- I asked -- yes.

23 THE COURT: "Was that your response?"

24 MR. BRODY: I asked --

25 THE COURT: That's the response.

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1 MR. BRODY: Correct, that it's --

2 THE COURT: So that's the response  
3 from Mr. Birchfield at this point.

4 THE WITNESS: That's correct.

5 MR. BRODY: And if --

6 THE COURT: It can be addressed.

7 MR. BRODY: Yes, Your Honor. And if  
8 there's some, you know, additional explanation that  
9 Mr. Pollock thinks needs to be made about that --

10 THE COURT: Counsel is entitled to  
11 the answer to the question. I mean, it works on  
12 both sides. So if it needs further explanation, I'm  
13 sure you'll have an opportunity.

14 MR. BRODY: Yeah. And it's -- it's  
15 -- you know, frankly, it's -- it's impeachment.  
16 It's not, you know -- it's -- it's his own  
17 testimony.

18 THE COURT: Continue.

19 MR. BRODY: Thank you.

20 THE WITNESS: Judge Porto?

21 MR. BRODY: Now --

22 THE COURT: I don't want you to  
23 address me -- Mr. Birchfield --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- you're a witness.

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1 THE WITNESS: I understand.

2 THE COURT: You don't direct any  
3 questions to the Court.

4 THE WITNESS: I understand.

5 THE COURT: You direct to counsel, if  
6 there's anything. So your focus is with regard to  
7 counsel. Thank you.

8 THE WITNESS: Yes. Yes, Your Honor.

9 BY MR. BRODY:

10 Q. So, Mr. Birchfield, September of  
11 2020, at that time, I take it, in your view, there  
12 may be others, but the two big differences in the  
13 talc matters at large between September of 2020 and  
14 the time of the LTL 2 bankruptcy proceeding last  
15 year, were the number of filed claims and the fact  
16 that J&J had proceeded with the bankruptcy; is that  
17 fair?

18 A. There were multiple, there were  
19 multiple differences between September '20 and  
20 today.

21 Q. All right. Do you --

22 A. And --

23 Q. I'm sorry. Go ahead.

24 A. So, but this is not -- this is not a  
25 proposal to settle all claims for 3.25 billion. I

1 answered the question that that was the proposal  
2 that I submitted, but I did not agree that that was  
3 a proposal to settle all current and future talc  
4 claims, ovarian cancer claims in the Imerys  
5 bankruptcy for 3.25.

6 Q. Well, we'll let the record of your  
7 testimony today and your prior testimony, you know,  
8 stand for the words that are going to be written on  
9 the transcript.

10 My question was actually about the  
11 big differences, or any differences, big differences  
12 between the litigation at that time, September of  
13 2020, and as of the time of the LTL 2 bankruptcy  
14 proceeding last year. And, in your view, the -- the  
15 two big differences are simply the total number of  
16 filed claims and the fact that, as of last year,  
17 J&J/LTL was in bankruptcy, right?

18 A. Those are two big factors. Those are  
19 not the only big factors.

20 Q. Those -- those are -- you would agree  
21 those are the big differences, right?

22 MR. POLLOCK: Objection; asked and  
23 answered.

24 THE WITNESS: Those are two of the  
25 differences.

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1 THE COURT: I'll overrule the  
2 objection.

3 BY MR. BRODY:

4 Q. All right. Do you recall giving a  
5 second deposition in the LTL bankruptcy proceeding  
6 in May of last year?

7 A. I do.

8 MR. BRODY: Your Honor, may approach?

9 THE COURT: Yes.

10 MR. BRODY: Thank you.

11 MR. POLLOCK: Your Honor, again, I  
12 object. This was not part of the record. It was  
13 not even a partial part of the record. This is a  
14 brand new document being given to me on the fly,  
15 which they obviously had in advance. I object to  
16 its use.

17 THE COURT: To the extent it's going  
18 to be for impeachment --

19 MR. BRODY: It's for impeachment,  
20 Your Honor, yes.

21 BY MR. BRODY:

22 Q. Mr. Birchfield, this is a copy of a  
23 transcript of a deposition you gave on May 30th of  
24 last year, correct?

25 A. Yes.

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1 Q. And if you would turn to page 101 of  
2 that transcript. Are you there?

3 A. Almost. Yes.

4 Q. And the question: "Just following up  
5 on your testimony that the situation is much  
6 different today, the world has changed, other than  
7 the number of change -- number of filed and unfiled  
8 claims, had there been any other developments  
9 pertinent to the talc litigation that you think  
10 would raise the settlement amount?"

11 Your answer was: "There may be  
12 others, but the two big differences were the total  
13 number of filed claims in September 2020 and J&J's  
14 filing of bankruptcy, the debtor's filing of  
15 bankruptcy."

16 And that was your testimony on  
17 May 30th of last year, correct?

18 A. Yeah.

19 MR. POLLOCK: Your Honor, I object  
20 under the doctrine of completeness. The question  
21 and line on this actually starts at page 100 --

22 THE COURT: I'm going to give you an  
23 opportunity, Mr. Pollock, to address that on --

24 MR. POLLOCK: Fair enough.

25 THE COURT: -- cross-examination, for

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1 completeness.

2 Go ahead.

3 MR. BRODY: Thank you, Your Honor.

4 BY MR. BRODY:

5 Q. Putting the September 2020 proposal  
6 aside, you've made additional settlement proposals  
7 to Johnson & Johnson as part of the tort claimant  
8 committee in the LTL bankruptcy, correct?

9 A. I have.

10 Q. In fact, you led the team effort on  
11 behalf of ovarian cancer plaintiffs to reach a  
12 mediated resolution of talc claims against J&J in  
13 the first LTL bankruptcy, correct?

14 A. I did.

15 Q. And you have stated that there was  
16 in-depth discussion of the value of talc claims from  
17 both sides within the context of that mediation,  
18 correct?

19 A. That would be true.

20 Q. All right.

21 A. You're asking me if I've said that.  
22 I'm sure that I have. I don't recall saying that,  
23 but it's --

24 Q. Do you have -- do you have --

25 A. -- certainly true.

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1 Q. You have your hearing exhibit binder  
2 there?

3 A. I do.

4 Q. And if you would turn to tab 16. Are  
5 you there?

6 A. I am.

7 Q. You recognize that document as a  
8 certification that you prepared, correct?

9 A. I do.

10 Q. And if you would turn to paragraph 11  
11 of your certification, you wrote, or you signed the  
12 statement: "With mediators involved, there was  
13 in-depth discussion of the value of the talc -- of  
14 talc claims from both sides."

15 Correct?

16 A. True.

17 Q. All right. But notwithstanding  
18 discussion of your position in the mediation  
19 context, the amount that you think would be  
20 reasonable compensation for ovarian cancer claimants  
21 is something that you consider to be confidential  
22 attorney work product, correct?

23 MR. POLLOCK: Your Honor, I object.  
24 I need a time frame, because this has been going on  
25 for four years, the facts have changed. So if we're



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1 going to have a discussion regarding what they are  
2 worth, I'd like to know what time that discussion  
3 occurred.

4 THE COURT: That's a fair question.

5 MR. BRODY: The question was I don't  
6 think specific at all to time frame, Your Honor. It  
7 was simply --

8 THE COURT: Do you have a time frame?

9 MR. BRODY: It was simply if he  
10 considers that to be an attorney work product. I  
11 don't think --

12 THE COURT: At any time.

13 MR. BRODY: Yeah. I don't there's a  
14 temporal component to that.

15 THE COURT: Overruled.

16 THE WITNESS: And I just want to make  
17 sure I understand. You're asking me, if the -- if  
18 the value -- how I would value a claim, a  
19 plaintiff's claim, if that is attorney-client work  
20 product?

21 BY MR. BRODY:

22 Q. I'm asking you if the amount you  
23 think would be reasonable compensation for ovarian  
24 cancer claimants is something you consider to be  
25 confidential attorney work product?

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1           A.           It can be.

2           Q.           It's not something you would  
3       disclose, is it?

4           A.           Well, no, we have talked. I mean, we  
5       have talked. We talked in open court about factors  
6       that would come into play in evaluating what a  
7       reasonable -- you know, what reasonable settlement  
8       values would be for, you know, for claimants.

9           Q.           You still have the copy of your  
10      May 30th deposition there? It's the smaller one.

11          A.           Yes.

12          Q.           If you would turn to page 94, line  
13      14. Are you there?

14          A.           Yes.

15          Q.           You were asked:

16                        "And you won't tell us what amount  
17      you think would be reasonable compensation for  
18      ovarian cancer claimants, correct?"

19                        And Ms. O'Dell objects on the basis  
20      that it's been asked and answered, and says, "It's  
21      protected by Rule 408. It's protected by the  
22      attorney-client work product privilege, and I would  
23      instruct the witness not to answer."

24                        And if you go to the next page, you  
25      were asked whether you would accept that

1 instruction, and you say, "My lawyer's instruction,  
2 yes."

3 That was your testimony, correct?

4 A. That is my testimony.

5 Q. All right. Similarly, Beasley  
6 Allen's view of what amount on average any  
7 resolution of its filed claims must be is  
8 confidential and protected attorney work product,  
9 correct?

10 A. It can be.

11 Q. All right. And so you didn't take  
12 issue when Ms. O'Dell objected on that basis to that  
13 same question when you were asked that question in  
14 the course of the second LTL bankruptcy proceeding  
15 when you were deposed on May 30th of last year,  
16 right?

17 A. I did not. I followed the advice of  
18 counsel.

19 Q. In other words, Beasley Allen's  
20 assessment of case values and injuries is its work  
21 product, right?

22 MR. POLLOCK: Objection.

23 THE WITNESS: It can be.

24 BY MR. BRODY:

25 Q. And when you do that kind of

1 assessment, that kind of assessment is based on  
2 confidential client information?

3 A. It can be, yes.

4 Q. Damages analysis, as well, you  
5 consider that to be work product?

6 A. It can be.

7 Q. Based on confidential client  
8 information?

9 A. It can be.

10 Q. All right. And because you're trying  
11 to draw this distinction, saying "it can be," and  
12 I'm taking from that, and I'm going to -- I'm going  
13 to go with you here, sometimes it's not. Why don't  
14 you tell me why it is that you are couching your  
15 answers.

16 A. Well, if I'm -- if I'm arguing before  
17 a jury, I'm going to put forward, in closing  
18 argument, I'm going to put forward the information  
19 in the analysis and make a recommendation about, you  
20 know, what that value is. But -- but there is a  
21 process in getting there, so it depends on the  
22 context. It depends on, you know, what the setting  
23 is. You would -- you would discuss those factors in  
24 mediation, you would discuss those, you know, in  
25 court, in court proceedings.

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1                   So, to say that it is, you know, that  
2                   it's protected attorney-client privilege just as a  
3                   blanket statement is more than I could -- more than  
4                   I could just embrace.

5                   Q.           Well, clearly, if you were standing  
6                   in this courtroom and you were talking to a jury  
7                   over there and you presented the jury with a number,  
8                   you're telling the jury, Here's what we want you to  
9                   give to --

10                  THE COURT:   You can't suggest that in  
11                  New Jersey.   You can't suggest a number.

12                  MR. BRODY:   All right.   If you were  
13                  not in this courtroom.

14                  THE COURT:   Hypothetically, and I'm  
15                  just telling you, so if anybody is looking at the  
16                  record, you can't suggest a number.

17                  BY MR. BRODY:

18                  Q.           All right.   So we're taking you out  
19                  of this courtroom, okay?   We're taking you -- we're  
20                  taking you to a jurisdiction where you're presenting  
21                  that information to the jury, to go with your --  
22                  your hypothetical.   And, you know, when you do that,  
23                  you're telling the jury, Here's -- here's what we  
24                  think you should award to my client, right?

25                  A.           Yes.

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1           Q.           Right. And that's very different  
2           than the internal analysis that goes on that makes  
3           you arrive at a place where you have an opinion, you  
4           know, here's what I think this case, you know, might  
5           really be worth, in the settlement context or  
6           potentially in any other context, right?

7           A.           I think so. I'm not sure I follow.

8           Q.           Well, I mean, it -- it -- it's  
9           clearly attorney work product to you to the extent  
10          that you followed Ms. O'Dell's instruction and  
11          objection in your deposition in the LTL bankruptcy  
12          proceeding and refused to answer that question,  
13          right?

14          A.           Right, but there -- right, that is  
15          true, but there are -- there are different -- there  
16          are different contexts. What are -- what are we  
17          talking about? Are you talking about the, you know,  
18          the value of an individual claimant? Are you  
19          talking about the value of all ovarian cancer  
20          claimants? Are you talking about the value of, you  
21          know, of all the claimants that were part of the LTL  
22          bankruptcy plan? Are you talking about the value in  
23          the context of litigation? Are you talking about in  
24          the context of a bankruptcy proceeding?

25                       There are a lot of multiple variables

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1 that would come into play. And so, I -- I don't --  
2 I don't know. I don't -- I honestly don't remember  
3 the full lead-up to, you know, to Ms. O'Dell's  
4 objection and me following her instruction, so I  
5 can't answer more than that.

6 Q. All right. So your -- your testimony  
7 is, yes, you know, our -- our analysis of claim  
8 values is our work product, but we might present  
9 that work product in a certain forum if we decided  
10 that it would be helpful to us or necessary, you  
11 know, for example, for the purposes of making an  
12 argument to a jury?

13 MR. POLLOCK: Objection. He didn't  
14 -- Mr. -- he never said he would provide his work  
15 product. He said he would provide a number. And  
16 there may be a big difference, because one is  
17 attorney-client privilege, how do you get to the  
18 number, versus the number. So the word "work  
19 product" to me is very laden here, because obviously  
20 it has relevance in the attorney-client work product  
21 scenario.

22 THE COURT: Could you rephrase the  
23 question, Mr. Brody?

24 MR. BRODY: Sure, I'll rephrase the  
25 question.

1 BY MR. BRODY:

2 Q. Fair to say that you would assess, in  
3 circumstances, whether the information was  
4 confidential attorney work product based on client  
5 confidences that you felt needed to be protected, or  
6 not, you would -- you would make that assessment as  
7 a lawyer?

8 A. I would.

9 Q. All right. Fair enough.

10 You agree, though, with Mr. Conlan  
11 that Beasley Allen sent its work product to Legacy,  
12 correct?

13 A. We did -- we did provide some work  
14 product to Legacy.

15 Q. All right. And some of that work  
16 product is described on a privilege log that was  
17 provided to Johnson & Johnson in connection with a  
18 third-party subpoena that was served in the MDL,  
19 correct?

20 A. Yeah.

21 MR. BRODY: All right. If I may  
22 approach with a copy of the log.

23 THE COURT: Are you familiar with  
24 that, Mr. Pollock?

25 MR. POLLOCK: I am.



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1 THE COURT: Okay. You may approach.

2 MR. BRODY: Thank you.

3 MR. POLLOCK: Are we marking this for  
4 identification?

5 MR. BRODY: We can.

6 THE COURT: What number are we on  
7 with regard to -- is it D-1, J&J 1? How are we  
8 marking?

9 MR. BRODY: We can make this J&J 1.

10 - - -

11 (J&J 1, marked for identification.)

12 - - -

13 BY MR. BRODY:

14 Q. We tried to make it as big as  
15 possible. So for orienting you, the entries run  
16 across the page and then they're continued on the  
17 back side, because there are so many columns on the  
18 chart. So if you, just to orient you, if you look  
19 at number 1, document 1 runs all the way across, and  
20 then it continues. You see the doc number on the  
21 next page, continues across through the description.

22 Are you with me?

23 A. I am.

24 Q. So, if you would, why don't we  
25 start -- and they go in order as they were numbered

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1 on the privilege log.

2 If you turn to document number 165.

3 Are you there?

4 A. Yes. Document 165.

5 Q. Correct. You got it?

6 A. Yes.

7 Q. And that's -- the date there is

8 May 7th 2023, correct?

9 A. Yes.

10 Q. The author is Leigh O'Dell, correct?

11 A. Yes.

12 Q. And if you look at the description  
13 for document 165 on the next page, it's described as  
14 "An ovarian cancer leadership memo to Legacy  
15 discussing ovarian cancer case values, injuries, and  
16 damages analysis," correct?

17 A. Yes.

18 Q. And that's one of the items of work  
19 product that Beasley Allen sent to Legacy, correct?

20 A. That would be my understanding.

21 Q. All right. And the next document,  
22 166, is the same thing, correct?

23 A. Yes.

24 Q. And -- all right. And if you would  
25 turn to document 234, as another example. Tell me

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1 when you're there.

2 A. Document 234, I'm there.

3 Q. All right. That's a document that  
4 you're the author of, correct?

5 A. Yes.

6 Q. And the date on that is May 15th,  
7 2023, correct?

8 A. Yes.

9 Q. And if you carry it over to the next  
10 page, it says "Draft attachment regarding ovarian  
11 cancer claim values," correct?

12 A. Correct.

13 Q. And that's another one of the work  
14 product documents that you sent over to Legacy,  
15 right?

16 A. I presume so.

17 Q. The fact that you shared your work  
18 product with Mr. Conlan last year is not a fact that  
19 is disclosed in any of the certifications that you  
20 filed in this case, is it?

21 A. No.

22 Q. By the way, it's not just amounts,  
23 it's number of claims. You consider, for example,  
24 your sources of information used to identify what  
25 you believe to be the potential number of future

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1 talc claims against Johnson & Johnson to be  
2 confidential and protected work product, right?

3 A. I mean, it could be, yes.

4 Q. All right. If you would -- you still  
5 have the May 30th deposition?

6 A. Yes.

7 Q. If you would turn to page 78.

8 A. Page 73.

9 Q. I'm sorry, 78.

10 A. 78.

11 Q. And you were quoted -- the question  
12 was, "You note later in that paragraph," you were  
13 being asked about a document, "in addition, any  
14 resolution must factor in at least 20,000 future  
15 claims. Do you see that?"

16 You said, "I do."

17 "QUESTION: Do you know where this --  
18 where you got that figure?"

19 There's an objection, and Ms. O'Dell  
20 says, "You may not answer where you got the  
21 information provided. You can answer yes or no, but  
22 beyond that is protected by the attorney-client work  
23 product privilege, and I would instruct you not to  
24 answer."

25 And your response was, "I do know

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1 where I got that information. It would be work  
2 product."

3 That was your answer, correct?

4 A. About the total number of future  
5 claimants --

6 Q. That's right.

7 A. -- where I got that number, yes.

8 Q. All right. After the second --

9 MR. BRODY: So, we're at a bit of a  
10 transition point here, Your Honor, and I don't know  
11 if you were going to take a break this afternoon.

12 THE COURT: Yeah, I wanted to see  
13 if this is a good natural spot to take a break,  
14 Mr. Brody?

15 MR. BRODY: Yes.

16 MR. POLLOCK: I want to at least know  
17 how -- are we finishing today, or are we going --  
18 how long are you going to take?

19 THE COURT: Well, that would be my  
20 next question.

21 MR. BRODY: Again, I certainly  
22 hope --

23 THE COURT: All right.

24 MR. BRODY: -- I would be done  
25 examining Mr. Birchfield before 4:30, and it's just

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1 a question of how long Mr. Pollock may have --

2 THE COURT: Okay.

3 MR. BRODY: -- and then what would  
4 come after that.

5 THE COURT: If we don't finish today,  
6 we've got to continue. And that's the bottom line.

7 MR. BRODY: Right.

8 THE COURT: Okay. Let's take a  
9 break. We'll go 10. Go off the record.

10 (A recess was taken.)

11 THE COURT: Mr. Brody.

12 MR. BRODY: Thank you.

13 BY MR. BRODY:

14 Q. Mr. Birchfield, are you ready?

15 A. Yes.

16 Q. After the second LTL bankruptcy  
17 filing, you, Ms. O'Dell, and Mr. Meadows from  
18 Beasley Allen served as representatives of a Beasley  
19 Allen client appointed to serve on the tort  
20 claimants committee in that bankruptcy, correct?

21 A. Yes.

22 Q. And that also involved mediation,  
23 correct?

24 A. It did.

25 Q. And you mentioned that fact in the

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1 January 29th certification, not the mediation, but  
2 the fact that you and Ms. O'Dell and Mr. Meadows  
3 served as representatives on the TCC in the  
4 certification you submitted on January 29th,  
5 correct?

6 A. Correct.

7 Q. When you described your role in the  
8 second LTL bankruptcy, you did not disclose in that  
9 certification that you were engaged in  
10 communications and discussions with Mr. Conlan  
11 throughout the course of that mediation, correct?

12 A. In the certification, I said -- I  
13 said when we had our first encounter, you know, with  
14 -- with Legacy, and when we had our first meeting.  
15 That -- I said that. I didn't talk about the  
16 mediation or -- or anything further.

17 Q. Right. And you didn't disclose that  
18 you had subsequent communications where you provided  
19 that your -- your work product and that the  
20 discussions went on beyond May 2nd of 2023; that's  
21 just not in your certification, right?

22 MR. POLLOCK: Objection to the phrase  
23 "work product." There's no proof of it. I would  
24 like to see what it is. I don't know what we're  
25 talking about.

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1 THE COURT: Mr. Brody?

2 MR. BRODY: I was just referring to  
3 his prior testimony, Your Honor.

4 THE COURT: Okay. Mr. Birchfield's --

5 MR. BRODY: Yes.

6 THE COURT: -- testimony. Okay.

7 MR. BRODY: Right.

8 BY MR. BRODY:

9 Q. That's -- that's not in your  
10 certification, right?

11 A. That's not in my certification.

12 Q. All right. What is in your  
13 certification is a statement that your first contact  
14 with Legacy in connection with the J&J talc  
15 litigation was in April of last year, right?

16 A. Correct.

17 Q. And that your first meeting with  
18 anyone from Legacy was on May 2nd of last year,  
19 correct?

20 A. Correct.

21 Q. And you met Mr. Conlan that day, too,  
22 didn't you?

23 A. On May 2nd, yes. That's right.

24 Q. All you said about your interactions  
25 with Mr. Conlan in your certification was that you



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1 met him for the first time on May 2nd, 2023, right?

2 A. Correct.

3 Q. And again, as I think you said, it  
4 doesn't say anything about your original  
5 communications with him, right?

6 A. Correct.

7 Q. Or any subsequent meetings with him  
8 after May 2nd, 2023, correct?

9 A. No. It just discussing our initial  
10 contact. That's correct.

11 Q. Right. And I'm going back to that  
12 first meeting on May 2nd, 2023. You didn't contact  
13 anyone at Johnson & Johnson to tell them that you  
14 were going to be speaking with Mr. Conlan, did you?

15 A. I did not.

16 Q. You didn't tell any of Johnson &  
17 Johnson's outside counsel, either, did you?

18 A. No.

19 Q. So there was no sort of, you know,  
20 Hey, guys, I've got this meeting set up with James  
21 Conlan. I know he represented you guys in the talc  
22 matter. Are you okay with that?

23 You never went to J&J with any sort  
24 of request like that, right?

25 MR. POLLOCK: Objection;

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1 argumentative. Because he's trying to make a  
2 closing during the middle of questioning.

3 MR. BRODY: Your Honor --

4 THE COURT: I'm going to overrule the  
5 objection.

6 MR. BRODY: Thank you.

7 THE COURT: Do you understand the  
8 question, Mr. Birchfield?

9 THE WITNESS: I think so, Your Honor.

10 I did not -- I did not mention, but  
11 there were a lot of things that I didn't mention in  
12 the certification. I was just merely stating, you  
13 know, that we -- when the contact began. And this  
14 was a meeting with -- with Legacy who had an  
15 alternative, you know, path that we were exploring  
16 through the mediation process. That -- it was a  
17 meeting with Legacy, a vendor, and I did not -- but  
18 I did not -- I didn't -- I didn't disclose that to  
19 J&J. It never crossed my mind.

20 BY MR. BRODY:

21 Q. Right. It never crossed your mind to  
22 go to J&J and say, Hey, I'm going to have a meeting  
23 with your former outside counsel on the talc matters  
24 and are you guys okay with that?

25 A. The only thing that I knew about, you

1 know, Jim Conlan, you know, at that point, was the,  
2 you know, the one thing that Jim Murdica had told me  
3 in the fall of late, you know, 2020, that he was  
4 working with the -- with the FCR. That -- that was  
5 it.

6 Q. And then, so you -- you certainly  
7 didn't ask Mr. Conlan, Hey, do you have a waiver  
8 that allows you, a former J&J lawyer on the talc  
9 matters, to talk to me, Andy Birchfield,  
10 representative on the TCC?

11 A. I certainly did not. I mean, in this  
12 context, a meeting with a vendor, Legacy, who has an  
13 alternative path, that there was nothing that  
14 suggested a waiver would be in order.

15 Q. And to the extent you know, nobody  
16 else from Beasley Allen asked Mr. Conlan that,  
17 either, right?

18 A. No, not to my knowledge.

19 Q. Including Ms. O'Dell, right?

20 A. Including Ms. O'Dell.

21 Q. Who is co-lead counsel for the  
22 plaintiffs in the MDL, right?

23 A. Correct.

24 Q. You just said that -- you referred to  
25 Legacy as a, did I get that right, as a vendor?

1 A. Yes.

2 Q. And that's something that appears  
3 in the certification that you submitted on  
4 January 29th, doesn't it?

5 A. Probably so.

6 Q. If you want to take a look, your  
7 certification is tab 16, and it's paragraph 19.

8 A. It's consistent with my testimony.

9 Q. You said you just -- you always  
10 viewed Legacy as a vendor who, I guess, had a  
11 creative solution to a difficult problem based on  
12 their collective experience in similar transactions.

13 A. Correct.

14 Q. Legacy is not the only company that  
15 acquires and manages mass tort liabilities, is it?

16 A. It's not. To my understanding, it is  
17 not.

18 Q. There are others like Enstar Group?

19 A. Correct.

20 Q. I don't know how to pronounce it,  
21 Dellikas -- Delkidas Group [phonetic].

22 A. I haven't had any dealings with them,  
23 but I would -- I understand that they would be --  
24 they would be another competitor in this area.

25 Q. Global Risk?

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1 A. Sounds right.

2 Q. R&O Legacy?

3 A. I don't know that name, but...

4 Q. You didn't -- you didn't partner with  
5 any of those companies, though, did you?

6 A. I didn't partner with any of those  
7 companies. I wouldn't consider, you know, our  
8 engagement with Legacy as a -- as partnering, you  
9 know, either.

10 Q. All right. Well, I'll use your word,  
11 "engagement." You didn't enter into an engagement  
12 with any of those other companies, right?

13 A. I didn't talk with any of those --  
14 those other companies. I don't have an engagement,  
15 you know, with -- with Legacy. You know, I mean, we  
16 did -- obviously, we did talk and we worked through  
17 mediation, a mediation process together. I have not  
18 talked with any of the -- any of the other companies  
19 that you named.

20 Q. Right. You didn't -- you didn't go  
21 to a single -- not just the ones I named, you didn't  
22 go to a single other company that acquires and  
23 manages tort liabilities, any of the companies in  
24 Legacy's field, and ask them, Hey, can you help us  
25 out here, we're -- we're looking for somebody to

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1 work with in this -- this talc realm?

2 A. I did not do that. I did not reach  
3 out to Legacy.

4 Q. You -- you spoke to Legacy?

5 A. I did.

6 Q. You continued to speak with them  
7 after the first meeting?

8 A. I did.

9 Q. You continued to speak with  
10 Mr. Conlan after the first meeting?

11 A. Yes.

12 Q. You sent him the documents that we  
13 see on the privilege log after the first meeting,  
14 right?

15 A. Yes.

16 Q. And you never went to any other  
17 company and said, Hey, can you guys do this; right?

18 A. No.

19 Q. All right. You chose to partner with  
20 -- I will not use "partner," since you objected to  
21 that. You chose to work with the one that had  
22 Johnson & Johnson's former lawyer from the talc  
23 matters as its CEO, didn't you?

24 A. Legacy came to us. They came to us  
25 and they laid out this proposal that would be a path

1 to the finality that we understood that J&J had been  
2 seeking; finality outside of bankruptcy.

3 So Legacy came to us, so we -- we  
4 explored that option and we explored that option  
5 through the mediation process and beyond.

6 Q. You say Legacy came to you. You  
7 wanted Legacy, didn't you?

8 A. No, not -- not at the beginning.

9 So Legacy -- Legacy came to us.  
10 Legacy came to us with this proposal, and a  
11 proposal, a path that would give J&J, you know,  
12 finality.

13 I became -- I became concerned about  
14 -- about Legacy and about this path, whether it is  
15 with Legacy or with -- or with another entity. So  
16 when -- when Legacy first talked with us, when they  
17 first talked with us, you know, alarm bells were  
18 going off in my mind. Not -- not for, you know, any  
19 client confidences from J&J, but as -- but I quickly  
20 came to understand that this is an -- this is an  
21 offer. This would be an offer, and Legacy or one of  
22 its competitors could engage in this transaction  
23 without us. And so it was a -- it was a serious  
24 concern.

25 Then I saw it as a potential

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1 opportunity. As I've explored more on behalf of the  
2 plaintiff leadership, as we explored this more, and  
3 we vetted this, and saw it as a, you know, as an  
4 opportunity, and an opportunity that was before us  
5 in this -- in the second bankruptcy, in the  
6 mediation that Judge Kaplan had ordered, is that we  
7 began to explore that option.

8 But it was not something where we  
9 were seeking -- we were seeking out, you know,  
10 Legacy or any of its competitors.

11 Q. So you -- you took advantage of what  
12 you saw as an opportunity, correct?

13 A. Yes.

14 Q. And you took advantage of that  
15 opportunity with Legacy, a company whose CEO had  
16 represented Johnson & Johnson as its outside counsel  
17 in the talc matters, correct?

18 MR. POLLOCK: Objection to the phrase  
19 "advantage."

20 THE COURT: Can you rephrase the  
21 question?

22 MR. BRODY: Sure.

23 BY MR. BRODY:

24 Q. You recognized it as an opportunity  
25 and you proceeded to work with Legacy, a company



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1 whose CEO was previously outside counsel for Johnson  
2 & Johnson on the talc matters?

3 A. It is true that we explored this with  
4 Legacy. It is true that, you know, that Jim Conlan  
5 is the CEO of Legacy, and it is true that Jim Conlan  
6 worked with Faegre while Faegre was representing  
7 J&J.

8 None of that, none of that was on the  
9 table. None of that was part of the, you know, part  
10 of the evaluation of this process. We did not -- we  
11 did not need any of the information that -- that Jim  
12 Conlan would have had as a lawyer. That's -- that's  
13 the reason that --

14 Q. I'm sorry. I didn't mean to cut you  
15 off.

16 A. That's the reason we put in the -- I  
17 put in my certification when the first contact with  
18 Legacy was. Because, by that point, by May 2nd of  
19 2023, late April when we had the first contact from  
20 anyone from Legacy, by that point, we had been in  
21 the -- we had been in the talc litigation for ten  
22 years.

23 So we had gone through mediation, we  
24 had gone through an estimation process, we had tried  
25 12 cases, we had extensive, extensive understanding

1 of the, you know, the claims and the claims value.  
2 We had extensive understanding of J&J's approaches  
3 to the litigation and their approaches to  
4 settlement. We had gone through -- we had gone  
5 through one bankruptcy and we were in the middle of  
6 a second.

7 Q. And so what you did is, you made  
8 clear that you wanted to include Legacy in the  
9 upcoming mediation that you anticipated to be part  
10 of the LTL 2 proceeding, correct?

11 A. We did want Legacy to be part of that  
12 mediation because Legacy offered -- offered a path  
13 to give J&J the finality that it had been telling us  
14 that it must have, and had been telling the Court  
15 that they could only get it through bankruptcy,  
16 which we knew not to be true. Legacy provided a  
17 win/win.

18 Q. You didn't come out of that May 2nd  
19 meeting and tell Mr. Conlan to take a hike, right?

20 A. I did not.

21 Q. You told him you wanted him in the  
22 mediation, right?

23 A. I don't know that coming out of that  
24 -- out of that meeting. I mean, at some point, you  
25 know, there was a discussion about Legacy being

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1 involved in the mediation, you know, process. I  
2 can't -- I can't say that it was the day after, or  
3 right out of that meeting, or even at that meeting.  
4 I can't say. But we did -- we did want Legacy to be  
5 involved in the -- in the mediation process.

6 Q. And in fact, I mean the plaintiffs  
7 steering committee has filed a brief in the MDL  
8 arguing in order to keep its communications with  
9 Mr. Conlan confidential, that it made clear, counsel  
10 made clear that it wanted to include Mr. Conlan's  
11 company, Legacy, right?

12 A. We did.

13 Q. Right. And -- and as I said, you  
14 didn't -- you didn't tell him after that meeting,  
15 you know, no, not interested, we don't want to work  
16 with you guys, right?

17 A. We did not.

18 Q. You told him you wanted him, that you  
19 felt he had a role, right?

20 A. No. We -- we considered, we  
21 considered, you know, after that meeting that the  
22 Legacy option was still a viable, you know, a viable  
23 option that would give J&J what we understood J&J,  
24 you know, to want, and that was the finality. They  
25 wanted the talc liability off its books. This was a

1 way, a way that we could get there. We were  
2 exploring multiple paths to get reasonable values  
3 for our clients.

4 Q. And if you -- my question was, I  
5 think, a lot simpler than that, and a little  
6 different. You felt that Mr. Conlan and Legacy had  
7 a role to play in the mediation, correct?

8 A. Yes, I thought that they had a role  
9 to play as a -- presenting an option.

10 Q. Right. And they were, as far as you  
11 were concerned, authorized to play that role. You  
12 didn't -- you wanted them, right?

13 A. I did not -- I didn't ask that they  
14 be excluded from the mediation. I did not. I did  
15 want -- I did want the mediators to, you know, to  
16 hear from Legacy. I did. I did that for me,  
17 personally, and that was providing leadership.

18 Q. And they did what you wanted. Legacy  
19 -- Legacy did what you wanted, right?

20 MR. POLLOCK: Objection. When you  
21 say "did what you wanted," can I seek clarification,  
22 Your Honor?

23 THE COURT: Did you understand the  
24 question?

25 THE WITNESS: No, I mean --

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1 THE COURT: Okay.

2 MR. BRODY: I'm happy -- I'm happy to  
3 clarify it, Your Honor.

4 THE COURT: Overruled.

5 BY MR. BRODY:

6 Q. Legacy, you said that -- that you  
7 wanted Legacy to communicate with the mediators,  
8 right?

9 A. I did want -- I did want Legacy to  
10 communicate with the mediators.

11 Q. And they did what you wanted them to  
12 do, right?

13 A. They did communicate with the  
14 mediators.

15 Q. Right. They -- yes, they did what  
16 you wanted them to do, right?

17 MR. POLLOCK: Objection. And so I --  
18 I -- with this "do what you wanted them to do," the  
19 problem is the mediators are having discussions,  
20 you're talking about discussion with a third party.

21 THE COURT: Mr. Birchfield answered  
22 the question. He said they did what he wanted them  
23 to do.

24 MR. BRODY: Fair enough, Your Honor.

25 BY MR. BRODY:

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1 Q. Again, without telling Johnson &  
2 Johnson, correct?

3 A. I did not -- I did not tell Johnson &  
4 Johnson. I anticipated that Johnson & -- that  
5 Johnson & Johnson would engage in the mediation that  
6 Judge Kaplan ordered the parties to do, and that if  
7 the mediators viewed Legacy as a viable option, that  
8 that would be part of the mediation process in the  
9 next few days.

10 But J&J did not engage in the  
11 mediation process. But it wasn't that we were  
12 trying to keep that from J&J. I thought that -- I  
13 thought Legacy -- I thought Legacy's involvement in  
14 the mediation would be front and center with the --  
15 with all of the parties.

16 Q. So the answer to my question is no,  
17 you didn't -- you didn't disclose that to J&J. You  
18 didn't disclose the fact that you felt that Legacy  
19 had a role to play in the mediation and that you  
20 would authorize them to play that role?

21 A. I did not.

22 Q. Okay. We talked about some of the  
23 documents authored by Ms. O'Dell and by you that you  
24 sent over to Legacy that appear on the privilege  
25 log.

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1 Do you know who -- you do know, I  
2 expect, who Niall Davies is?

3 A. I do.

4 Q. He is or was a project manager at  
5 Beasley Allen last year during the course of the  
6 mediation, correct?

7 A. Correct.

8 Q. And he also sent over various  
9 documents to the mediators, right?

10 A. He sent -- he sent some documents  
11 that were part of the mediation process. I don't  
12 know if he sent anything directly to, you know, to  
13 the mediators. I don't -- I don't recall.

14 Q. All right. If you can take a look at  
15 the privilege log, if you still have it up there  
16 with you, and I want you to take a look at document  
17 315.

18 A. 315, I'm sorry?

19 Q. Yes, 315. We'll just take a look at  
20 one of them.

21 A. Okay.

22 Q. Are you there?

23 A. Yes.

24 Q. And you see that on May 12th,  
25 Mr. Davies sent over, and it carries over to the

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1 next page, a draft -- a draft QSF, qualifications  
2 for the Legacy ovarian cancer proposal, right?

3 A. Right.

4 Q. And you were providing information to  
5 Legacy to work to develop that proposal with Legacy,  
6 correct?

7 A. No, that's not correct.

8 Q. All right. You just randomly asked  
9 Mr. Davies to send over information? I mean, there  
10 must have been a reason for it.

11 A. We sent the information, but that was  
12 -- that was based on qualifications, client  
13 qualifications that had been, you know, that had  
14 been developed before any contact with, you know,  
15 with Legacy. So it was -- it was providing  
16 information. It wasn't developing with Legacy, you  
17 know, the -- the criteria.

18 Q. Well, one of the things you did  
19 develop with Legacy was a term sheet for the Legacy  
20 ovarian cancer claim proposal, right?

21 A. No.

22 Q. Why don't you take a look at 381.  
23 Tell me when you're there.

24 A. 381. I'm there.

25 Q. It's a seven-page document. You're



1 the author, correct?

2 A. Correct.

3 Q. And date on that is May 12th, 2023,  
4 right?

5 A. Yes.

6 Q. And if you flip to the next page,  
7 that's a draft term sheet for the Legacy ovarian  
8 cancer proposal, correct?

9 A. Yes.

10 Q. By the way, that draft term sheet  
11 went back and forth and back and forth numerous  
12 times, didn't it?

13 A. It went back -- back and forth  
14 several times.

15 Q. All right. Take a look --

16 A. That was not a --

17 Q. Take a look at --

18 MR. POLLOCK: Your Honor, can he  
19 please finish answering the question?

20 BY MR. BRODY:

21 Q. That's -- that's -- why don't we take  
22 a look at 103. Tell me when you're there.

23 A. 103. I'm there.

24 Q. And if you take a look at 103, this  
25 is something that Mr. Conlan sent to Jonathan

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1 Terrell at KCIC, and it's an email from ovarian  
2 cancer counsel forwarding the draft term sheet and  
3 protocol for ovarian cancer claims administration,  
4 right?

5 A. Yes.

6 Q. And if we go forward in time, and  
7 there are a lot of them, so I don't want to stop on  
8 all of them, but why don't we take a look at 330.  
9 Tell me when you're there.

10 A. I'm there.

11 Q. And this is a document from you,  
12 right?

13 A. Yes.

14 Q. It's dated June 7th, 2023?

15 A. Yes.

16 Q. And if you flip over to the next  
17 page, this is email from ovarian cancer counsel,  
18 that's you, ovarian cancer counsel, right?

19 A. Yes.

20 Q. To Legacy, attaching edits to  
21 proposed ovarian cancer claims term sheet, correct?

22 A. Yes.

23 Q. And I don't want to go through every  
24 -- every entry, but you'll agree that that wasn't  
25 the only time that drafts were going back and forth,

1 was it?

2 A. There were, you know, as I recall,  
3 there were a couple back and forth on the term  
4 sheets. I mean, one of the things that you see in  
5 the privilege log is that if there -- if there were  
6 emails that were the same email, different people,  
7 it's in here multiple times. It's the same -- the  
8 same document.

9 But, yes, there were back -- there  
10 were emails back and forth on the term sheet. But  
11 that is not a term sheet that was developed with  
12 Legacy.

13 So the -- the plaintiffs' leadership  
14 had developed a term sheet. We had a term sheet  
15 that we had all agreed on in -- in March, late March  
16 of 2023, and that is -- that's before the LTL 1  
17 bankruptcy is officially dismissed and the second  
18 bankruptcy is -- is filed.

19 So we, as the ovarian cancer  
20 leadership committee, had developed a -- we had  
21 developed a term sheet with the terms and had  
22 offered to provide that to J&J in an in-person  
23 meeting with Mr. Haas and Liz Forminard. So we had  
24 offered to do that. That's in late March of 2003.

25 So that, the term sheet, the term

1 sheet that is here is not a term sheet that was  
2 developed with Legacy. It was already developed,  
3 so --

4 Q. Fair, fair enough. And so what was  
5 happening here was there were communications going  
6 back and forth between you and Legacy, including  
7 Mr. Conlan, exchanging edits to that term sheet,  
8 right?

9 A. The back and forth with that term  
10 sheet was with Scott Gilbert. There weren't any  
11 changes to the term sheet, other than, you know,  
12 typos and grammatical -- grammatical issue, because  
13 Scott Gilbert is a stickler for that.

14 But the term sheet was not developed.  
15 It was -- it was a term sheet that we had already  
16 developed as an ovarian cancer committee. We were  
17 providing it to -- to Legacy and to KCIC so that  
18 they could -- so that they could -- they could test  
19 that with claimant data.

20 Q. So let me make sure I understand. So  
21 you -- you wanted to get them the term sheet. And  
22 then, in the process, there was some back and forth.  
23 You were -- you were fixing things, you were making  
24 edits. I imagine that you're getting down to a  
25 pretty granular level at that point; fair?

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1           A.           Well, granular level in grammatics  
2     and typos. But the term sheet was -- the term sheet  
3     was our work term sheet, and it's what we had --  
4     what we had developed, you know, through -- we had  
5     developed, you know, through mediation in LTL 1. We  
6     had, you know, developed, you know, that in the wake  
7     of the Third Circuit's -- the Third Circuit's  
8     dismissal order on January the 30th. We had been --  
9     we had been putting together proposals inside of  
10    bankruptcy -- inside bankruptcy proposal, as well as  
11    -- as well as outside options. At that point, we  
12    had that term sheet together.

13          Q.          And then all of that was shared with  
14    Legacy for what you -- and I take it that the -- the  
15    plaintiffs steering committee was accurate in its  
16    description of documents in the privilege log that  
17    it provided in order to assert privilege claims over  
18    documents that had been identified by KCIC; fair?

19          A.          I would assume so.

20          Q.          And so if the privilege log reflects  
21    that those communications regarding the term sheet  
22    went back and forth numerous times over a period of  
23    21 days between May 18th and June 8th, that that  
24    would be accurate, right?

25          A.          I don't have any reason to doubt the

1 accuracy of the privilege log.

2 Q. Okay. And then the reason that you  
3 were engaged in this back and forth was so that  
4 Legacy could see, Okay, here's what we have  
5 developed. "We," the plaintiffs in the talc  
6 litigation, counsel representing plaintiffs in the  
7 talc litigation. Here's what we have developed.  
8 And you said you -- they -- Legacy could then sort  
9 of test that against their claim values, was what  
10 you said, right?

11 A. No. I said that KCIC -- KCIC, the  
12 claims administrator, you know, entity that Legacy  
13 had brought in to -- I don't -- I don't know the  
14 official business relationship, but that KCIC could  
15 take the -- see the claims criteria and they could  
16 process some claims data to see, you know, if that  
17 -- if it works and how efficient it would be. That  
18 -- that is -- that's a part of a process with any  
19 claims administration group that you're going to,  
20 you know, be utilizing in a mass settlement. So  
21 they were -- so that was the -- you know, that was  
22 the -- that was the purpose of providing them with  
23 the -- with the term sheet, which included the  
24 claims criteria.

25 Q. And it wasn't just KCIC. It was also

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1 Legacy that was sending drafts back and forth,  
2 wasn't it?

3 A. That Legacy was sending drafts back  
4 and forth --

5 Q. Legacy was commenting on the draft  
6 term sheet?

7 A. Yes, grammatical-type stuff. That's  
8 what I'm -- that's what --

9 Q. Well, it was -- it was -- it was  
10 deeper than grammatical. It wasn't just, Oh, you  
11 know, here's, three weeks -- three weeks later, we  
12 found another typo, without revealing any of the  
13 substance. It went deeper than just there should be  
14 a semicolon here, right?

15 A. There -- I do not recall a single  
16 substantive change that was made by Legacy to, you  
17 know, to the term sheet that we had, that we had  
18 proposed.

19 Q. So you went back and forth over the  
20 course of three weeks on typos, that's your -- and  
21 grammatical issues?

22 A. I think that's an unfair  
23 characterization because you -- in the -- we could  
24 go back and forth in two hours and have really  
25 serious substantive, you know, discussions. But you

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1 could go over a period of three weeks and not have,  
2 you know, any substantive changes. It's just a  
3 matter of timing.

4 The details, the substantive details  
5 of this term sheet had been developed by -- by us.  
6 You know, similar term sheets had been shared, you  
7 know, through the mediation process with J&J. There  
8 were not substantive issues to be dealt with with  
9 Legacy.

10 Q. So Legacy was -- Legacy was reviewing  
11 -- I'm just trying to bring this to a close. You  
12 guys developed the term sheet, you share it with  
13 Legacy, right?

14 A. We did.

15 Q. And you say to Legacy, Do you think  
16 this is going -- actually, I'm not even going to  
17 ask, because there's a mediation privilege claim.  
18 So I was going to ask you about what you said to  
19 Legacy about the term sheet, but I'm not going to --  
20 I'm not going to ask at this point, because I don't  
21 want to invade the mediation privilege that's been  
22 asserted.

23 Well, let me ask you this. In  
24 addition to exchanging drafts of the term sheet, in  
25 addition to providing the work product that you



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1 identified earlier, you also had Zoom meetings to go  
2 over proposed claims administration processes,  
3 right, without disclosing the substance of the  
4 processes?

5 A. We did. That's part of what I just  
6 described with KCIC, processing claims data.

7 Q. You had additional meetings,  
8 in-person meetings, after May 2nd of last year,  
9 right?

10 A. We did.

11 Q. And you discussed term sheet issues,  
12 right?

13 A. No, no. We -- I don't recall ever  
14 discussing any term sheet issues with -- with anyone  
15 other than, you know, Scott Gilbert back on the, you  
16 know, the grammar and style, style issues.

17 I mean, we discussed it. We  
18 discussed it in the essence of, you know, being able  
19 to, you know, describe for them and for KCIC how it  
20 would work, what would be, you know, what would be,  
21 you know, valid claims, what would be, you know,  
22 excluded claims, what would be the, you know, the  
23 medical records that would be necessary to identify  
24 those claims.

25 Q. And so what you were doing was you

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1       were engaging in close collaboration and strategy  
2       communications regarding how to consider, conduct,  
3       participate in, initiate, and/or continue to mediate  
4       with J&J regarding this proposal, right?

5                       MR. POLLOCK:   Objection to  
6       "collaboration."    I'm not sure what that means, but  
7       if --

8                       THE COURT:   Do you understand the  
9       question, Mr. Birchfield?

10                      THE WITNESS:   I mean, I don't -- I  
11       don't know what he means by "collaboration."

12                      THE COURT:   Can you rephrase the  
13       question?

14       BY MR. BRODY:

15               Q.       Well, let me ask you this.  You're  
16       aware that -- well, plaintiffs in this litigation  
17       may have decided -- you know, they have asserted  
18       mediation privilege, so these documents are not  
19       available.  They have been kept confidential from  
20       Johnson & Johnson.

21                      You understand that Judge Schneider  
22       reviewed the documents in camera, correct?

23               A.       I do.

24               Q.       And you understand that after his in  
25       camera review, Judge Schneider found that the

1 documents include close collaboration and strategy  
2 communications regarding how to consider, conduct,  
3 participate in, initiate, and/or continue to mediate  
4 with J&J regarding plaintiffs' proposal to resolve  
5 the talc cases, right?

6 A. Am I aware that he made that finding?  
7 Is that what you're asking?

8 Q. Yes.

9 A. Yes.

10 Q. He didn't get it wrong, did he?

11 A. I think that you could -- I think  
12 that you could describe that as, you know,  
13 collaboration.

14 Q. All right.

15 A. Okay. Since --

16 Q. Thank you. That's -- that's --  
17 that's fine. He also found --

18 A. He has since said we -- we may  
19 collaborate on --

20 Q. I'm sorry. You've answered,  
21 Mr. Birchfield, and I'm --

22 MR. POLLOCK: Your Honor, this is --  
23 this is --

24 MR. BRODY: It's taking longer than --

25 MR. POLLOCK: He was asked whether

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1 Judge Schneider had it right, and Mr. Brody is again  
2 cutting him off. So the question -- to me, the  
3 question is on that phrase. There was a whole bunch  
4 of phrases in there. Does Judge Schneider have it  
5 right.

6 MR. BRODY: Well, let me --

7 THE COURT: You're -- you're asking  
8 for his opinion? You're asking for Mr. Birchfield's  
9 opinion?

10 MR. BRODY: Let me -- let me -- let  
11 me ask -- let me ask this question.

12 THE COURT: Okay.

13 MR. BRODY: Because I -- I believe,  
14 Judge Porto, I believe I got an answer, so.

15 BY MR. BRODY:

16 Q. He found that there were regular  
17 communications with Birchfield. That's you, right?

18 A. Yes.

19 Q. And other counsel for plaintiffs  
20 regarding the foregoing matters, including when and  
21 how to present the settlement proposal to J&J in the  
22 context of the mediation, correct?

23 A. He did.

24 Q. He also found that the communications  
25 included consideration of what mediator to use, and

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1 he found that it included the role to be played by  
2 the mediator in the discussions, right?

3 A. Yes, he made that finding.

4 Q. In other words, the -- the dynamics  
5 of the mediation; fair?

6 A. He did make that finding.

7 Q. And your communication and -- and you  
8 agree with me, that's sort of a mediation dynamics  
9 issue, isn't it?

10 A. About which mediator to use?

11 Q. Which mediator to use and -- and  
12 when.

13 A. I don't recall -- I don't recall any  
14 of that, you know, taking place here. Judge  
15 Kaplan -- Judge Kaplan appointed. He entered an  
16 order appointing the mediators. That's -- that's  
17 who was used. I don't -- I don't recall anything --  
18 I don't recall any --

19 Q. Did he --

20 A. -- discussions beyond that.

21 Q. You understand that none of the  
22 mediators were aware that Mr. Conlan previously  
23 worked for Johnson & Johnson as outside counsel on  
24 the talc matters, right?

25 A. I -- I saw their -- their answers to

1 the interrogatories, or --

2 Q. And that's it. So that's a yes,  
3 you're aware of that, correct?

4 A. I am aware of that now.

5 Q. All right. Your communications with  
6 Mr. Conlan did not end when the second LTL  
7 bankruptcy was dismissed, did they?

8 A. They did not.

9 Q. And you continued to discuss the  
10 Legacy proposal with Mr. Conlan and others at  
11 Legacy, correct?

12 A. We discussed the proposal, meaning in  
13 the sense that we had -- we had -- we worked through  
14 the, you know, the Legacy approach, the, you know,  
15 structural optimization and disaffiliation. You  
16 know, we had provided, you know, Legacy with a --  
17 with a term sheet, including a, you know, a matrix  
18 that, you know, that -- that we would support. So,  
19 I mean, that was in place.

20 So, yes, I did have a follow-up, you  
21 know, conversation with Mr. Conlan, as he testified  
22 today. I mean, would I be willing to -- would I be  
23 willing to meet with J&J, J&J executives, Mr. Haas,  
24 to walk through, you know, the grid and how, you  
25 know, I believe that would be received by plaintiffs

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1 across the country, and how, you know, I believe  
2 that it would garner the 95 percent voluntary  
3 opt-in/out.

4 We did have discussions. Mr. Conlan  
5 and I did have discussions about will you still --  
6 would you still support -- would you -- you know,  
7 this -- this term sheet with this matrix, would you  
8 be willing to meet with J&J executives. So, yes, we  
9 did have conversations.

10 Q. So you sat down and you talked about  
11 the matrix, you talked about some of the things that  
12 you had laid out with ovarian cancer counsel in the  
13 work product documents we saw. And that's -- that's  
14 sort of the -- the nuts and bolts of the matrix, is  
15 assessment of claim values, injuries, damages  
16 analysis. It all -- it all gets wrapped up in  
17 there, doesn't it?

18 MR. POLLOCK: Objection; compound.  
19 If you could break that down, it would be helpful.

20 THE COURT: And we're coming close to  
21 4:30, too.

22 BY MR. BRODY:

23 Q. My question, Mr. Birchfield, is  
24 simply, all those -- all those factors get wrapped  
25 up into a claims matrix, right?

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1 MR. POLLOCK: Objection to the word  
2 "work product" in the last few questions, since he's  
3 not going to rephrase.

4 MR. BRODY: I just did rephrase.

5 MR. POLLOCK: I thought you said "all  
6 those factors," which would include work product,  
7 which is what I'm objecting to. That's why I was  
8 asking for a clarification.

9 MR. BRODY: Assessment of claims  
10 value -- let me ask it this way. I -- I'm happy to  
11 rephrase, Your Honor.

12 BY MR. BRODY:

13 Q. Assessments of claim values, damages  
14 analysis, injuries, all of that gets wrapped up into  
15 a claims matrix, doesn't it?

16 A. A claims matrix would include -- it  
17 would include settlement values, so the value of the  
18 claims in the settlement context. It would include,  
19 you know, the -- an analysis of the injuries. What  
20 injuries are going to be, you know, included or not.  
21 It would include -- it would include the assessment  
22 of risk factors, and, you know, should there be, you  
23 know, reductions or deductions for risk factors, and  
24 if so, to what degree.

25 All of that, all of those factors and



1 others are included in, you know, included in a  
2 matrix.

3 Q. Right. And the discussions that you  
4 were having with Mr. Conlan included discussions of  
5 why do you think that we could get a 95 percent  
6 opt-in to this kind of settlement matrix, right?

7 A. No.

8 Q. All right. You just -- you just --  
9 so let me ask it this way. I mean, you just said,  
10 and correct me if I'm wrong, you just said that  
11 after the bankruptcy ended, you and Mr. Conlan  
12 talked about, Well, what kind of support are we  
13 going to get for this proposal, right?

14 A. No. I mean, not after the -- you  
15 know, we had this discussion early on in, you know,  
16 in the interaction, in the mediation process, when  
17 we laid out our term sheet and our matrix. We -- we  
18 told -- we told, you know, Legacy, I'm sure we told  
19 the mediators, that, you know, that we would -- we  
20 were confident that we would garner 95 percent  
21 participation, voluntary participation in an  
22 opt-out/opt-in settlement program. So we had those  
23 -- we had those discussions.

24 That's not something that I  
25 discussed, you know, with Mr. -- with Mr. Conlan.

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1 MR. BRODY: Your Honor, we -- we are  
2 at 4:30.

3 THE COURT: And you need more time.  
4 How much more time do you need, Mr. Brody?

5 MR. BRODY: I probably have 30  
6 minutes.

7 THE COURT: Okay. And we're not  
8 going to continue today. We're going to have to  
9 look at another day. And obviously, I don't want to  
10 look to you, Mr. Pollock, and say can you get things  
11 done in seven minutes. So I think that's fair for  
12 you, after 30 more minutes of Mr. Brody, for  
13 whatever examination time that you need.

14 MR. POLLOCK: I promise you I'll only  
15 need 1/10th of what he's using.

16 THE COURT: Well, I'm not -- I'm not  
17 going to hold you to it.

18 MR. POLLOCK: Okay.

19 THE COURT: So we're going to adjourn  
20 today. We're going to look at our calendars one  
21 more time. Perhaps 30 minutes, more or less,  
22 perhaps 10 minutes. I don't know, Mr. Pollock, but  
23 when we come back, we'll do that. So let's all look  
24 at our calendars one more time. We'll do what we  
25 did before, and we'll send an email out. All right?

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1 MR. POLLOCK: And tomorrow does not  
2 work, I assume.

3 THE COURT: Tomorrow doesn't work,  
4 no.

5 MR. POLLOCK: Okay. Thank you.

6 THE COURT: Well, what we're also  
7 looking at anticipating is written closings. So  
8 counsel is looking at provision of getting the  
9 transcripts, and then providing written closings to  
10 the Court.

11 MR. BRODY: We can -- we can do that.  
12 Judge Singh had entered an order requesting  
13 simultaneous submission of briefs from each side two  
14 weeks after the conclusion of the hearing, and then  
15 replies a week after that.

16 THE COURT: Fair.

17 JUDGE SINGH: It can still apply.

18 THE COURT: Yeah, I think that's -- I  
19 think that's a good time period, assuming we get the  
20 transcript in that time period.

21 MR. BRODY: We were also prepared,  
22 Your Honor, I know that, Judge Porto, you had asked  
23 for us to just close --

24 THE COURT: Well, I --

25 MR. BRODY: -- at the end.

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1 THE COURT: -- thought so, too. But  
2 maybe, you know, in terms of getting a, you know, a  
3 full aspect, whatever closings are necessary.

4 MR. BRODY: Yeah.

5 THE COURT: That's Judge Singh and I  
6 were conferring today about that.

7 MR. POLLOCK: Can we -- it's nothing  
8 unique, since I've been doing this for 35 years now.  
9 Can we file with both Courts the same brief at the  
10 same time.

11 THE COURT: Yes, that's -- that's  
12 exactly what we anticipated.

13 MR. POLLOCK: Excellent.

14 JUDGE SINGH: And one clean-up for  
15 our docket that I can't quite recall. If the  
16 transcripts from these proceedings are not being  
17 filed on the docket, please ensure that they are  
18 filed on our docket so that the record is complete.

19 MR. POLLOCK: Absolutely.

20 JUDGE SINGH: Thank you.

21 THE COURT: All right, everyone?

22 MR. POLLOCK: Thank you, Your Honors.

23 THE COURT: Thanks so much. Take  
24 care. We're adjourned. We can off the record.

25 (The hearing adjourned at 4:31 p.m.)

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## C E R T I F I C A T I O N

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## New Jersey Rules Governing Civil Practice

## Part IV, Rule 4:14

## Depositions Upon Oral Examination

## 4:14-5. Submission to Witness; Changes; Signing

If the officer at the taking of the deposition is a certified shorthand reporter, the witness shall not sign the deposition. If the officer is not a certified shorthand reporter, then unless reading and signing of the deposition are waived by stipulation of the parties, the officer shall request the deponent to appear at a stated time for the purpose of reading and signing it. At that time or at such later time as the officer and witness agree upon, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, and any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness. If the witness fails to appear at the time stated or if the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness' failure or

refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under R. 4:16-4(d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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